

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

[Pursuant to the order of the House on Feb. 17, 1972, the following report was filed on Feb. 19, 1972.]

Mr. STAGGERS: Committee on Interior and Insular Affairs. H.R. 11021. A bill to control the emission of noise detrimental to the human environment, and for other purposes; with amendment (Rept. No. 92-842). Referred to the Committee of the Whole House on the State of the Union.

Mr. PATMAN: Joint Committee on Defense Production. Twenty-First Annual Report on the Activities of the Joint Committee on Defense Production; with amendment (Rept. No. 92-843). Referred to the Committee of the Whole House on the State of the Union.

PUBLIC BILLS AND RESOLUTIONS

Under clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. ASPIN:

H.R. 13267. A bill to amend the Communications Act of 1934 to prohibit making unsolicited commercial telephone calls to persons who have indicated they do not wish to receive such calls; to the Committee on Interstate and Foreign Commerce.

By Mr. HARRINGTON:

H.R. 13268. A bill to provide for the establishment of an Office for the Aging in the Executive Office of the President, for the fulfillment of the purposes of the Older Americans Act, for enlarging the scope of that act, and for other purposes; to the Committee on Education and Labor.

By Mrs. GRIFFITHS (for herself, Mr. BROOMFIELD, Mr. BROWN of Michigan, Mr. CEDERBERG, Mr. CHAMBERLAIN, Mr. CONYERS, Mr. DIGGS, Mr. DINGELL, Mr. ESCH, Mr. GERALD R.

FORD, Mr. WILLIAM D. FORD, Mr. HARVEY, Mr. HUTCHINSON, Mr. McDONALD of Michigan, Mr. NEDZI, Mr. O'HARA, Mr. RIEGLE, Mr. RUPPE, and Mr. VANDER JAGT):

H.R. 13269. A bill relating to the income tax treatment of living expenses of a State legislator while away from home in attending sessions of the State legislature; to the Committee on Ways and Means.

PETITIONS, ETC.

Under clause 1 of rule XXII, petitions, and papers were laid on the Clerk's desk and referred as follows:

193. By the SPEAKER: Petition of J. B. Stoner, Marietta, Ga., and others, relative to impeachment proceedings; to the Committee on the Judiciary.

194. Also petition of the city council, White Salmon, Wash., relative to Federal-State revenue sharing; to the Committee on Ways and Means.

SENATE—Monday, February 21, 1972

The Senate met at 12 o'clock meridian and was called to order by Hon. DAVID H. GAMBRELL, a Senator from the State of Georgia.

PRAYER

The Reverend Dr. Douglas R. Chandler, professor of church history, Wesley Theological Seminary, Washington, D.C., offered the following prayer:

Eternal God, father of all, we thank Thee for the lessons of our past which revive ancient dreams and remind us again and again of our covenant with Thee. We have learned in our blackest hours of despair to flee to Thee for renewed hope. Thou hast taught us that Thy laws are established in Thy love, and Thy judgments are overshadowed by Thy mercies.

Now again, as we seek to "praise famous men and our fathers who begat us," we thank Thee for the remembrance of one whose face and name are marked so clearly in our history and in our hearts: our first President. By remembering him, we are moved to pray that, like him, we may be free from unworthy passions and small prejudices and that good sense, wise counsel, honest speech, and incorruptible zeal may grace our deeds and words.

Forgive, O Lord, and sanctify to our good the faults which we now confess. Make our minds eager to learn Thy thoughts and our feet quick to walk Thy ways of righteousness and peace. Deliver us from every temptation to spoil the spacious beauty of our inheritance or to endanger the health and goodness of our fair land. Work among us by Thy Spirit, that we may be people blessed by Thee, covenanted for the healing of the nations, instruments of Thy peace, and laborers, still, for that "godly union and concord" of which our fathers dreamed. Amen.

DESIGNATION OF THE ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication

to the Senate from the President pro tempore (Mr. ELLENDER).

The assistant legislative clerk read the following letter.

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, D.C., February 21, 1972.
To the Senate:

Being temporarily absent from the Senate on official duties, I appoint Hon. DAVID H. GAMBRELL, a Senator from the State of Georgia, to perform the duties of the Chair during my absence.

ALLEN J. ELLENDER,
President pro tempore.

Mr. GAMBRELL thereupon took the chair as Acting President pro tempore.

THE JOURNAL

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the reading of the Journal of the proceedings of Friday, February 18, 1972, be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

WAIVER OF THE CALL OF THE CALENDAR

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the call of the Legislative Calendar, under rule VIII, be dispensed with.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

THE CALENDAR

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of unobjected to bills beginning with Calendars No. 588, through No. 599.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

MRS. KAYO N. CARVELL

The bill (H.R. 2714) for the relief of Mrs. Kayo N. Carvell, was considered, ordered to a third reading, read the third time, and passed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92-621), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE OF THE BILL

The purpose of the bill is to preserve immediate relative status in behalf of the widow of a U.S. citizen, to which status she would have been entitled were it not for the death of her husband.

JUANITA SAVEDIA VARELA

The bill (H.R. 2792) for the relief of Juanita Savedia Varela, was considered, ordered to a third reading, read the third time, and passed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92-622), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE OF THE BILL

The purpose of the bill is to preserve immediate relative status in behalf of the widow of a U.S. citizen, to which status she would have been entitled were it not for the death of her husband.

MRS. CRESCENCIA LYRA SERNA AND HER MINOR CHILDREN, MARIA MINDE FE SERNA, SALLY GAROZA SERNA, GONZALO GAROZA SERNA, AND JAMES GAROZA SERNA

The bill (H.R. 3093) for the relief of Mrs. Crescencia Lyra Serna and her minor children, Maria Minde Fe Serna, Sally Garoza Serna, Gonzalo Garoza Serna, and James Garoza Serna, was considered, ordered to a third reading, read the third time, and passed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92-623), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE OF THE BILL

The purpose of the bill is to grant the status of permanent residence in the United States to Mrs. Crescencia Lyra Serna and her minor children, Maria Minde Fe Serna, Sally Garoza Serna, Gonzalo Garoza Serna, and James Garoza Serna. The bill provides for appropriate deduction of visa numbers and for payment of the required visa fees.

JOSEPHINE DUMPIT

The bill (H.R. 4319) for the relief of Josephine Dumpit was considered, ordered to a third reading, read the third time, and passed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92-624), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE OF THE BILL

The purpose of the bill is to facilitate the entry into the United States as an immediate relative of the alien child adopted by a citizen of the United States.

SOO YONG KWAK

The bill (H.R. 5179) for the relief of Soo Yong Kwak, was considered, ordered to a third reading, read the third time, and passed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92-625), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE OF THE BILL

The purpose of the bill is to facilitate the entry into the United States as an immediate relative of the alien child adopted by a citizen of the United States and his lawful resident alien wife, notwithstanding the fact that two prior immediate relative petitions were approved.

MRS. HIND NICHOLAS CHABER, GEORGETTE HANNA CHABER, JEANETTE HANNA CHABER, AND VIOLETTE HANNA CHABER

The bill (H.R. 6506) for the relief of Mrs. Hind Nicholas Chaber, Georgette Hanna Chaber, Jeanette Hanna Chaber, and Violette Hanna Chaber was considered, ordered to a third reading, read the third time, and passed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92-626), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE OF THE BILL

The purpose of the bill is to preserve second preference status in behalf of the widow and three daughters of a deceased lawful resident alien, to which status they would have been entitled had the husband and father lived.

WILLIAM LUCAS

The bill (H.R. 6912) for the relief of William Lucas (also known as Vasilios Loukatis) was considered, ordered to a third reading, read the third time, and passed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92-627), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE OF THE BILL

The purpose of the bill is to facilitate the adjustment of status as an immediate relative of the adopted son of citizens of the United States.

MRS. NORMA MCLEISH

The bill (H.R. 7316) for the relief of Mrs. Norma McLeish was considered, ordered to a third reading, read the third time, and passed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92-628), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE OF THE BILL

The purpose of the bill is to preserve immediate relative status in behalf of Mrs. Norma McLeish, the widow of a U.S. citizen, to which status she would have been entitled were it not for the death of her husband.

ELEONORA G. MPOLAKIS

The bill (H.R. 8540) for the relief of Eleonora G. Mpolakis was considered, ordered to a third reading, read the third time, and passed.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92-629), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE OF THE BILL

The purpose of the bill is to facilitate the entry into the United States as an immediate relative to the adopted child of citizens of the United States.

WOLFGANG KUTTER

The bill (S. 2275) for the relief of Wolfgang Kutter was considered, ordered to be engrossed for a third reading, read the third time, and passed, as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the periods of time Wolfgang Kutter has resided in the United States since his lawful admission for permanent residence on August 13, 1962, shall be held and considered to meet the residence and physical presence requirements of section 316 of the Immigration and Nationality Act.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report

(No. 92-620), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE OF THE BILL

The purpose of the bill is to enable the beneficiary to file a petition for naturalization.

GIRL SCOUTS OF AMERICA

The resolution (S. Res. 259) commemorating the Girl Scouts of America on their 60th anniversary, March 12, 1972, was considered and agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

Whereas Girl Scouts of the United States of America, chartered by the Congress of the United States, is celebrating the sixtieth anniversary of its founding on March 12, 1912; and

Whereas Girl Scouts of the United States of America, begun as a movement to liberate girls from narrow, confining life roles, has since taken the lead in advancing what are today such universal concerns as protection of the environment, youth participation in self-government, strengthened roles for the volunteer worker, and international understanding through friendship; and

Whereas Girl Scouts of the United States of America is quietly and effectively helping to unite young Americans of all races, creeds, ethnic and economic backgrounds, and is providing to millions of girls and adults unlimited opportunities for self-development and responsible service to their communities and to the Nation; and

Whereas Girl Scouts of the United States of America, true to its pioneering tradition, continues to anticipate the changing needs of girls and of the society and to encourage its nearly four million members to be doers, rather than talkers; leaders, not followers; and givers, not takers: Now, therefore, be it

Resolved, That during the week of March 12 through 18, the Girl Scouts of the United States of America are commended, on the sixtieth birthday of their organization, for a progressive spirit and lasting contribution to the social welfare of this Nation.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92-630), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE

The purpose of the resolution is that during the week of March 12 through 18 inclusive, the Girl Scouts of the United States are commended on the 60th birthday of their organization for a progressive spirit and lasting contribution to the social welfare of this Nation.

STATEMENT

March 12, 1972, marks the 60th anniversary of Girl Scouting. Girl Scouting in the United States was founded in 1912, by Juliette Low in Savannah, Ga. Mrs. Low brought Girl Scouting from England, where Lord Baden-Powell had founded the Scout and Guide movements for boys and girls. The Girl Scouts were chartered by Congress on March 16, 1950. During those 60 years nearly 31 million girls, men and women have been members of the Girl Scouts. At the present time, there are 3,250,000 girls and 675,000 adults in scouting, with over 400 Girl Scout councils in the 50 States.

The ideals fostered by the Girl Scout organization are impressive. Girl Scouting strives to inspire girls with the highest ideals of

character, conduct, patriotism, and service so that they may become happy and resourceful citizens. The organization gives a girl a chance to be herself, to choose what she wants to be, the personal values she wants to hold short, her own life style. Girl Scouts learn to make decisions early in life by actually making them.

The activities in which Girl Scouts are involved are truly innovative. Sixty years ago, Girl Scouts studied first aid. They camped, hiked, and learned some basic home management skills. They still do. But Girl Scouts nowadays also tour space flight centers, participate in archeological digs, and join in experiments in self-government. They work directly with disadvantaged children in inner-city areas and migrant labor camps. Councils conduct rug education programs; they enlist the aid of other civic and service groups to make local communities aware of the need and the opportunity for effective action against drug abuse. The Girl Scout Council of the Nation's Capital sponsored an anti-drug abuse convocation in the fall of 1970, joining with other concerned community groups to circulate facts on drugs to area residents.

RECOMMENDATION

The committee is of the opinion that this resolution has a meritorious purpose and would call attention to all of our citizens the outstanding accomplishments of the Girl Scouts of America.

Accordingly, the committee recommends favorable consideration of Senate Resolution 259, without amendment.

BOY SCOUTS OF AMERICA

The bill (H.R. 11738) to amend title 10, United States Code, to authorize the Secretary of Defense to lend certain equipment and to provide transportation and other services to the Boy Scouts of America in connection with Boy Scout jamborees, and for other purposes was announced as next in order.

Mr. SCHWEIKER. Mr. President, in the summer of 1973 two simultaneous national Boy Scout jamborees will be held at Farragut State Park, Idaho, and Moraine State Park, Pa. This will be the eighth national jamboree held during the 61 years of existence of the Boy Scout movement in this country. For the first time, the Boy Scouts will stage two jamborees in an effort to meet the increased demand and in order to lessen travel costs and other economic considerations, thus enabling a greater cross section of American youth to participate.

The purpose of H.R. 11738 is to enable the Government to lend certain equipment and services to these two jamborees, which will have approximately 35,000 scouts and leaders in attendance at each one, and to future national and world jamborees. While the participants will bring their own personal, patrol and troop equipment, there are certain items that the Boy Scouts of America is unable to secure without the help of the Government. Such items include field refrigerators, large hospital and commissary tents, extra cots and blankets for hospital services and for central staff, and a limited number of vehicles.

Congress had passed enabling legislation for the seven previous national jamborees and for the participation of American contingents in three world jamborees.

Services that may be authorized for the Boy Scouts include health and safety,

communications, engineering, protection, and logistical services. Such equipment and services will be provided by the Government subject to the following conditions.

Equipment will be on a loan basis.

The Boy Scouts of America will pay for delivery and return, plus the cost of rehabilitation, replacement, or repair.

All equipment and services will be provided on condition that the national defense program is not jeopardized.

The Boy Scouts of America will post a bond to insure the safe return of all Government property.

The provision authorizing transportation has been used principally in connection with Boy Scouts of America participation in world jamborees, to provide transportation, on a space-available basis, and at no expense to the Government, for overseas dependents of military and governmental personnel who are certified by the Boy Scouts of America as bona fide jamboree participants. It has also been used on occasion on a space-available basis, at no expense to the Government, to ship limited amounts of equipment to jamborees for the use of the Boy Scouts of American contingent.

The section authorizing other departments of the Federal Government to cooperate under such regulations as may be prescribed by the Secretary of such department is to provide for such contingencies as the following example: The General Service Administration might have a key item of equipment that might be loaned that would not be available through the Department of Defense.

Such jamborees offer an opportunity for American youth to become better acquainted with this great Nation of ours, to live in a democratic camp society with boys from all sections of our Nation, and from other free nations, and to practice the scouting principles of self-reliance and cooperation with their fellow Scouts. The assistance of the Government in the past has enabled the Boy Scouts to more adequately accommodate and safeguard these thousands of American boys.

Mr. MANSFIELD. Mr. President, I ask unanimous consent to have printed in the RECORD an excerpt from the report (No. 92-631), explaining the purposes of the measure.

There being no objection, the excerpt was ordered to be printed in the RECORD, as follows:

PURPOSE OF THE BILL

The purpose of this bill is to provide permanent authority for the Secretary of Defense to lend Army, Navy, and Air Force equipment and to provide transportation and other services to the Boy Scouts of America in support of their national jamborees and world jamborees.

The equipment authorized to be loaned would include tents, cots, blankets, commissary equipment, flags, refrigerators, and such other equipment as may be necessary or useful.

The services to be furnished under authorization of the bill would typically be communications, medical, engineering, protective, and logistic. The authorization includes the furnishing of expendable medical supplies.

Under the general terms of the bill such equipment and provisions as the following types of support which have been provided in the past could be made available:

(1) Specialized equipment for adminis-

trative support and the operation of such equipment.

(2) Personnel for security, accounting, and organizational maintenance of the equipment loaned.

(3) Administrative support personnel such as supervisors, medical and dental technicians, military police, and bandsmen.

(4) Temporary duty and per diem costs of the foregoing support personnel as authorized by law.

Transportation would be authorized to be furnished from the U.S. military commands overseas and return on transportation of the armed services. Such transportation would be provided to Boy Scouts, Scouters, and officials certified by the National Council Boy Scouts of America, as representing the National Council at jamborees, and to Boy Scouts and Boy Scout leaders of other nations whose associations are certified by the Boy Scouts of America as being official representatives to the world jamborees. Transportation would also be provided for equipment and property and the property loaned pursuant to the bill.

Transportation would be furnished to the extent that to do so would not interfere with the requirements of military operations. Transportation would be provided and equipment furnished at no expense to the U.S. Government.

The legislation requires that before the delivery of property by the Secretary of Defense the Boy Scouts of America shall furnish a good and sufficient bond for the safe return of property in good condition. A similar bond would also be required for reimbursement to the United States for the actual cost of transportation furnished.

REASON FOR PERMANENT AUTHORIZATION

The Congress has passed enabling legislation providing for the loan of equipment and provision of services for seven previous national jamborees and for participation of American Scouts in three world jamborees.

Given the salutary purposes of the bill and the safeguards provided in the legislation, the committee can foresee no circumstances under which such loan of equipment and provision of services would not continue to be appropriate in the future. The committee, therefore, has provided permanent authorization to obviate the need for periodically enacting such legislation.

FISCAL DATA

This bill provides that no expense shall be incurred by the U.S. Government for delivery, return, rehabilitation, or replacement of equipment loaned. All such costs are to be paid by the Boy Scouts of America. Transportation is to be furnished at no expense to the United States. The services to be provided are nonreimbursable and, in addition, there will be some administrative costs to the Department of Defense in the process of shipments would be nominal and it is believed they can be absorbed within the regular operational budgets of the military installations involved.

DETRIMENTAL DATA

The Department of Defense position was set forth in testimony before the House Armed Services Committee by Maj. Donald E. Sexton, U.S. Army, as follows:

In past years legislation authorizing the Secretary of Defense to lend certain Army, Navy, and Air Force equipment and to provide transportation and other services to the Boy Scouts of America in connection with jamborees was introduced on a case by case basis. For example, Public Law 91-539, 91st Congress, December 9, 1970, authorized the Secretary of Defense to support the Boy Scouts of America at the XIII World Jamboree which was held in Japan, August 7-13, 1971. Support encompassed the loan of equipment, supplies, and certain services necessary and available without jeopardizing the national defense program.

The theme of the 1971 Jamboree, For Understanding, prevailed in all facets of jamboree activities. The 7,800 American scouts in attendance, identified by the stars and stripes on their uniforms, received great applause and admiration wherever they appeared. One of the most significant results of the jamboree was the fellowship and understanding for other peoples the Boy Scouts of America obtained from their association with the scouts of all nations. The international rapport achieved made the equipment loaned and time spent by the Department of Defense and other Government agencies in coordinating the services to the American contingent very worthwhile.

It has been traditional for the Government to assist the Boy Scouts of America with their national and international jamborees. The proposed legislation would give the Secretary of Defense permanent authorization to furnish support to future jamborees. The bill provides that no expense shall be incurred by the U.S. Government for the delivery and return of this loaned equipment and that the Boy Scouts of America shall pay for the cost of the actual rehabilitation and repair or replacement of such equipment. Some administrative costs are incurred in the processing of outgoing and incoming shipments and the inspection of equipment returned; however, these costs are absorbed within the operation cost of the installation involved and are not charged to the Boy Scouts of the United States of America. These expenses have been nominal in the past and it is believed they will continue to remain so. The fiscal effects of the legislation, however, are not known to the Department of Defense.

The Department of the Army on behalf of the Department of Defense strongly endorses the proposed legislation (H.R. 11738) and considers it to be of material assistance in reducing the year to year administrative burden of formalizing Department of Defense support for Boy Scouts of America. I appreciate the opportunity to appear before the committee and will be happy to answer questions you may have on the bill.

The bill was ordered to a third reading, read the third time, and passed.

COMMITTEE MEETINGS DURING SENATE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that all committees may be authorized to meet during the session of the Senate today.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

EXECUTIVE SESSION

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate go into executive session to consider nominations on the Executive Calendar.

There being no objection, the Senate proceeded to the consideration of executive business.

The ACTING PRESIDENT pro tempore. The nominations on the Executive Calendar will be stated.

DEPARTMENT OF COMMERCE

The second assistant legislative clerk read the nomination of Peter G. Peterson, of Illinois, to be Secretary of Commerce.

The ACTING PRESIDENT pro tempore. Without objection, the nomination is considered and confirmed.

NOMINATIONS PLACED ON THE SECRETARY'S DESK—IN THE COAST GUARD

The second assistant legislative clerk proceeded to read sundry nominations in the Coast Guard, which had been placed on the Secretary's desk.

The ACTING PRESIDENT pro tempore. Without objection, the nominations are considered and confirmed en bloc.

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the President be immediately notified of the confirmation of these nominations.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

LEGISLATIVE SESSION

Mr. MANSFIELD. Mr. President, I move that the Senate resume the consideration of legislative business.

The motion was agreed to, and the Senate resumed consideration of legislative business.

MODERATION IN FLORIDA

Mr. MANSFIELD. Mr. President, in the February 18 issue of the Washington Daily News, the lead editorial is entitled "Moderation in Florida."

The first paragraph reads as follows:

In a year when so many politicians are trying so hard to be on the "right" side of busing, school prayer and other emotional issues, the views expressed by Florida Gov. Reubin Askew are a refreshing example of moderation and common sense.

Mr. President, I ask unanimous consent to have the editorial in full printed in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

MODERATION IN FLORIDA

In a year when so many politicians are trying so hard to be on the "right" side of busing, school prayer and other emotional issues, the views expressed by Florida Gov. Reubin Askew are a refreshing example of moderation and common sense.

Gov. Askew is opposed to a constitutional ban on busing to achieve racial desegregation. He also is opposed to a constitutional amendment permitting formal prayer in the public schools. Both questions will be submitted to Florida voters in the March 14 presidential primary. And both have a great deal of popular support.

The governor has said busing is "an artificial and inadequate instrument of change." Which it is. But he also points out that some busing may be necessary to comply with the law. Which is true.

So that next month's busing vote is not "misunderstood," Gov. Askew says, he also has asked the voters to say (in a separate ballot question) whether they favor equal educational opportunity, regardless of race, and oppose a return to the old dual school system of blacks in one school and whites in another.

As to the prayer amendment, the governor, a life-long churchgoer, is against it—not because he opposes prayer but because he believes, along with the framers of the Constitution, in the separation of church and state.

These are not positions likely to endear Gov. Askew to all of his constituents, especially in a state where Wallace-for-President sentiment is loud and strong.

Which makes Gov. Askew's stand all the more courageous as well as sensible.

Mr. MANSFIELD. Mr. President, may I say that the content of this editorial makes me more proud of the fact that I look upon Governor Askew as being the logical vice-presidential candidate on the Democratic ticket.

I hope that this outstanding southerner, this man who has done so much for Florida and can do so much for the Nation, will be given the consideration which I believe he deserves.

ORDER OF BUSINESS

The ACTING PRESIDENT pro tempore (Mr. GAMBRELL). Does the distinguished Republican leader desire to be recognized at this time?

Mr. SCOTT. Yes, Mr. President.

CONFEREES ON H.R. 12067

Mr. SCOTT. Mr. President, I ask unanimous consent that the distinguished Senator from New Hampshire (Mr. CORTON) be released as a conferee on H.R. 12067, the foreign aid appropriation bill, and that the distinguished Senator from Hawaii (Mr. FONG) may be named as a conferee.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

GEORGE WASHINGTON'S BIRTHDAY CELEBRATION

Mr. SCOTT. Mr. President, as we celebrate the birthday of George Washington, our first President, I am moved to comment that I probably have been more closely associated with the name of Washington historically than any other Member of Congress, as I was born on Washington land which my family acquired through Matthew Fontaine Maury who had acquired it from the family, of Betty Washington Lewis, a part of the Kenmore tract.

I grew up a few yards from the home of Washington's mother.

I read with great interest the letters in the town courthouse from George Washington to his mother, pleading with her not to be so extravagant in the buying of various baubles of clothing and decorations.

My home in Philadelphia is on the route followed by George Washington to the battle of Germantown at the Chen house and his retreat along German-town Pike.

I can see from my house in Chestnut Hill the Militia Hill where the troops rested en route to Valley Forge. I was a guide as a small boy in my town at the Mary Washington House. So that I have been well aware of the history of our first President.

The estimate of the President published in today's Washington Post, written by Thomas Jefferson some 15 years or so after the death of George Washington, makes very interesting reading. It does not decrease his stature. Jefferson recognized, as a man who had grown apart from the President in some ways over the issues of high national priority,

the towering stature of Washington, and retained for him the respect which all of us retain today.

So, from the first President to our current President, who is now cutting new ground and making history, we are proud of the long line of those who have assumed, and assumed so well, the responsibility for our governance.

ORDER OF BUSINESS

Mr. SCOTT. Mr. President, I ask unanimous consent that the Senator from Ohio (Mr. SAXBE) be permitted to proceed for 3 minutes prior to the reading of the Farewell Address.

The ACTING PRESIDENT pro tempore. Is there objection? The Chair hears none, and it is so ordered.

PRESIDENT NIXON'S HISTORIC MEETING IN CHINA

Mr. SAXBE. Mr. President, I was thrilled this morning to see the President of the United States meet in friendship the leaders of the People's Republic of China—this nation, the largest on earth, which has been our avowed enemy for over a generation.

I was proud to hear the President's straightforward expression of a desire for peace in the world and a desire for all peoples to enjoy the freedom to choose their form of government.

Wars in our history have killed over 57 million people. Untold misery and brutality have repeatedly humiliated man's attempt to rise above an animal-like existence.

Our daily struggles and petty desires pale before the magnitude of the challenge facing the entire world today. Can we survive as men of character and comparison or are destined to perish by our greed, envy, selfishness, and ignorance?

Somehow the experience of today makes the hope of survival a little more attainable. Somehow the billion humans represented at the historic meeting seemed to have improved their odds for a generation of peace.

ORDER OF BUSINESS

Mr. MANSFIELD. Mr. President, I had not anticipated that we would do any morning business. However, in view of what has happened, I ask unanimous consent that the distinguished Senator from Wyoming (Mr. McGEE) be recognized for 3 minutes and that immediately thereafter the distinguished Senator from Texas (Mr. BENTSEN) be recognized for the purpose of delivering the Farewell Address of the first President of the United States.

The ACTING PRESIDENT pro tempore. Is there objection? The Chair hears none, and it is so ordered.

MEANING OF WASHINGTON'S FAREWELL ADDRESS

Mr. McGEE. Mr. President, we are gathered here to observe the birth date of our first President, whose Farewell Address is supposed to have advised against any foreign entanglements at the

very moment the President of the United States finds himself in China in a venture that is a breakthrough in our days.

I would hasten to note that the first President's comments in his Farewell Address have generally been misconstrued, in my judgment, and misrepresented, as most Presidents have been misrepresented by those who would have him think or say things that he never did. As one of those who might be guilty, I confess that I did a doctor's thesis on the Farewell Address, the thrust of which was the Founding Fathers and entangling alliances. It suggested that the first President was consciously entangling us in the broils of Europe for our immediate advantage. That the immediate strife in Europe became an opening wedge for America to take advantage of this entanglement for the advancement of our country. And it represented a perspicacity on the part of our President and the other Founding Fathers that, I think, remains very laudable before the bar of our country's history.

I suggest that all our first President was pleading for was us to not overextend ourselves in our first years until we had matured and acquired greater capacity in self-government before plunging into the realities of the world around us—words that still loom large in the lexicon of wisdom that even now should guide our country, nearly two centuries later.

READING OF WASHINGTON'S FAREWELL ADDRESS

The ACTING PRESIDENT pro tempore. Under the order of January 24, 1901, Washington's Farewell Address will now be read.

The reading will be by the distinguished Senator from Texas (Mr. BENTSEN), who has been designated for that purpose by the Vice President of the United States.

Mr. BENTSEN, at the rostrum read the Farewell Address, as follows:

To the people of the United States.

FRIENDS AND FELLOW CITIZENS: The period for a new election of a citizen to administer the executive government of the United States being not far distant, and the time actually arrived when your thoughts must be employed in designating the person who is to be clothed with that important trust, it appears to me proper, especially as it may conduce to a more distinct expression of the public voice, that I should now apprise you of the resolution I have formed, to decline being considered among the number of those, out of whom a choice is to be made.

I beg you, at the same time, to do me the justice to be assured, that this resolution has not been taken, without a strict regard to all the considerations appertaining to the relation which binds a dutiful citizen to his country; and that, in withdrawing the tender of service which silence in my situation might imply, I am influenced by no diminution of zeal for your future interest; no deficiency of grateful respect for your past kindness; but am supported by a full

conviction that the step is compatible with both.

The acceptance of, and continuance hitherto in the office to which your suffrages have twice called me, have been a uniform sacrifice of inclination to the opinion of duty, and to a deference for what appeared to be your desire. I constantly hoped that it would have been much earlier in my power, consistently with motives which I was not at liberty to disregard, to return to that retirement from which I had been reluctantly drawn. The strength of my inclination to do this previous to the last election, had even led to the preparation of an address to declare it to you; but mature reflection on the then perplexed and critical posture of our affairs with foreign nations, and the unanimous advice of persons entitled to my confidence, impelled me to abandon the idea.

I rejoice that the state of your concerns, external as well as internal, no longer renders the pursuit of inclination incompatible with the sentiment of duty or propriety; and am persuaded, whatever partiality may be retained for my services, that in the present circumstances of our country, you will not disapprove my determination to retire.

The impressions with which I first undertook the arduous trust, were explained on the proper occasion. In the discharge of this trust, I will only say that I have, with good intentions, contributed towards the organization and administration of the government, the best exertions of which a very fallible judgment was capable. Not unconscious in the outset, of the inferiority of my qualifications, experience, in my own eyes, perhaps still more in the eyes of others, has strengthened the motives to diffidence of myself; and, every day, the increasing weight of years admonishes me more and more, that the shade of retirement is as necessary to me as it will be welcome. Satisfied that if any circumstances have given peculiar value to my services they were temporary, I have the consolation to believe that, while choice and prudence invite me to quit the political scene, patriotism does not forbid it.

In looking forward to the moment which is to terminate the career of my political life, my feelings do not permit me to suspend the deep acknowledgment of that debt of gratitude which I owe to my beloved country, for the many honors it has conferred upon me; still more for the steadfast confidence with which it has supported me; and for the opportunities I have thence enjoyed of manifesting my inviolable attachment, by services faithful and persevering, though in usefulness unequal to my zeal. If benefits have resulted to our country from these services, let it always be remembered to your praise, and as an instructive example in our annals, that under circumstances in which the passions, agitated in every direction, were liable to mislead amidst appearances sometimes dubious, vicissitudes of fortune often discouraging—in situations in which not unfrequently, want of success has countenanced the spirit of criticism,—the constancy of your support was the essential prop of the efforts, and a guarantee of

the plans, by which they were effected. Profoundly penetrated with this idea, I shall carry it with me to my grave, as a strong incitement to unceasing vows that heaven may continue to you the choicest tokens of its beneficence—that your union and brotherly affection may be perpetual—that the free constitution, which is the work of your hands, may be sacredly maintained—that its administration in every department may be stamped with wisdom and virtue—that, in fine, the happiness of the people of these states, under the auspices of liberty, may be made complete by so careful a preservation, and so prudent a use of this blessing, as will acquire to them the glory of recommending it to the applause, the affection and adoption of every nation which is yet a stranger to it.

Here, perhaps, I ought to stop. But a solicitude for your welfare, which cannot end but with my life, and the apprehension of danger, natural to that solicitude, urge me, on an occasion like the present, to offer to your solemn contemplation, and to recommend to your frequent review, some sentiments which are the result of much reflection, of no inconsiderable observation, and which appear to me all important to the permanency of your felicity as a people. These will be offered to you with the more freedom, as you can only see in them the disinterested warnings of a parting friend, who can possibly have no personal motive to bias his counsel. Nor can I forget, as an encouragement to it, your indulgent reception of my sentiments on a former and not dissimilar occasion.

Interwoven as is the love of liberty with every ligament of your hearts, no recommendation of mine is necessary to fortify or confirm the attachment.

The unity of government which constitutes you one people, is also now dear to you. It is justly so; for it is a main pillar in the edifice of your real independence; the support of your tranquility at home; your peace abroad; of your safety; of your prosperity; of that very liberty which you so highly prize. But, as it is easy to foresee that, from different causes and from different quarters much pains will be taken, many artifices employed, to weaken in your minds the conviction of this truth; as this is the point in your political fortress against which the batteries of internal and external enemies will be most constantly and actively (though often covertly and insidiously) directed; it is of infinite moment, that you should properly estimate the immense value of your national union to your collective and individual happiness; that you should cherish a cordial, habitual, and immovable attachment to it; accustoming yourselves to think and speak of it as of the palladium of your political safety and prosperity; watching for its preservation with jealous anxiety; discountenancing whatever may suggest even a suspicion that it can, in any event, be abandoned; and indignantly frowning upon the first dawning of every attempt to alienate any portion of our country from the rest, or to enfeeble the sacred ties which now link together the various parts.

For this you have every inducement

of sympathy and interest. Citizens by birth, or choice, of a common country, that country has a right to concentrate your affections. The name of American, which belongs to you in your national capacity, must always exalt the just pride of patriotism, more than any appellation derived from local discriminations. With slight shades of difference, you have the same religion, manners, habits, and political principles. You have, in a common cause, fought and triumphed together; the independence and liberty you possess, are the work of joint, counsels, and joint efforts, of common dangers, sufferings and successes.

But these considerations, however powerfully they address themselves to your sensibility, are greatly outweighed by those which apply more immediately to your interest.—Here, every portion of our country finds the most commanding motives for carefully guarding and preserving the union of the whole.

The *north*, in an unrestrained intercourse with the *south*, protected by the equal laws of a common government, finds in the productions of the latter, great additional resources of maritime and commercial enterprise, and precious materials of manufacturing industry.—The *south* in the same intercourse, benefiting by the same agency of the *north*, sees its agriculture grow and its commerce expand. Turning partly into its own channels the seamen of the *north*, it finds its particular navigation invigorated; and while it contributes, in different ways, to nourish and increase the general mass of the national navigation, it looks forward to the protection of a maritime strength, to which itself is unequally adapted. The *east*, in a like intercourse with the *west*, already finds, and in the progressive improvement of interior communications by land and water, will more and more find a valuable vent for the commodities which it brings from abroad, or manufactures at home. The *west* derives from the *east* supplies requisite to its growth and comfort—and what is perhaps of still greater consequence, it must of necessity owe the secure enjoyment of indispensable outlets for its own productions, to the weight, influence, and the future maritime strength of the Atlantic side of the Union, directed by an indissoluble community of interest as *one nation*. Any other tenure by which the *west* can hold this essential advantage, whether derived from its own separate strength; or from an apostate and unnatural connection with any foreign power, must be intrinsically precarious.

While then every part of our country thus feels an immediate and particular interest in union, all the parts combined cannot fail to find in the united mass of means and efforts, greater strength, greater resource, proportionably greater security from external danger, a less frequent interruption of their peace by foreign nations; and, what is of inestimable value, they must derive from union, an exemption from those broils and wars between themselves, which so frequently afflict neighboring countries not tied together by the same government; which their own rivalry

alone would be sufficient to produce, but which opposite foreign alliances, attachments, and intrigues, would stimulate and embitter.—Hence likewise, they will avoid the necessity of those overgrown military establishments, which under any form of government are inauspicious to liberty, and which are to be regarded as particularly hostile to republican liberty. In this sense it is, that your union ought to be considered as a main prop of your liberty, and that the love of the one ought to endear to you the preservation of the other.

These considerations speak a persuasive language to every reflecting and virtuous mind and exhibit the continuance of the union as a primary object of patriotic desire. Is there a doubt whether a common government can embrace so large a sphere? let experience solve it. To listen to mere speculation in such a case were criminal. We are authorized to hope that a proper organization of the whole, with the auxiliary agency of governments for the respective subdivisions, will afford a happy issue to the experiment. It is well worth a fair and full experiment. With such powerful and obvious motives to union, affecting all parts of our country, while experience shall not have demonstrated its impracticability, there will always be reason to distrust the patriotism of those who, in any quarter, may endeavor to weaken its hands.

In contemplating the causes which may disturb our Union, it occurs as matter of serious concern, that any ground should have been furnished for characterizing parties by *geographical* discriminations,—*northern* and *southern*—*Atlantic* and *western*; whence designing men may endeavor to excite a belief that there is a real difference of local interests and views. One of the expedients of party to acquire influence within particular districts, is to misrepresent the opinions and aims of other districts. You cannot shield yourselves too much against the jealousies and heart burnings which spring from these misrepresentations; they tend to render alien to each other those who ought to be bound together by fraternal affection. The inhabitants of our western country have lately had a useful lesson on this head: they have seen, in the negotiation by the executive, and in the unanimous ratification by the senate of the treaty with Spain, and in the universal satisfaction at the event throughout the United States, a decisive proof how unfounded were the suspicions propagated among them of a policy in the general government and in the Atlantic states, unfriendly to their interests in regard to the Mississippi. They have been witnesses to the formation of two treaties, that with Great Britain and that with Spain, which secure to them everything they could desire, in respect to our foreign relations, towards confirming their prosperity. Will it not be their wisdom to rely for the preservation of these advantages on the union by which they were procured? will they not henceforth be deaf to those advisers, if such they are, who would sever them from their brethren and connect them with aliens?

To the efficacy and permanency of your Union, a government for the whole is indispensable. No alliances, however, strict, between the parts can be an adequate substitute: they must inevitably experience the infractions and interruptions which all alliances, in all times, have experienced. Sensible of this momentous truth, you have improved upon your first essay, by the adoption of a constitution of government, better calculated than your former, for an intimate union, and for the efficacious management of your common concerns. This government, the offspring of our own choice, uninfluenced and unawed, adopted upon full investigation and mature deliberation, completely free in its principles, in the distribution of its powers, uniting security with energy, and containing within itself a provision for its own amendment, has a just claim to your confidence and your support. Respect for its authority, compliance with its laws, acquiescence in its measures, are duties enjoined by the fundamental maxims of true liberty. The basis of our political systems is the right of the people to make and to alter their constitutions of government.—But the constitution which at any time exists, until changed by an explicit and authentic act of the whole people, is sacredly obligatory upon all. The very idea of the power and the right of the people to establish government, presuppose the duty of every individual to obey the established government.

All obstructions to the execution of the laws, all combinations and associations under whatever plausible character, with the real design to direct, control, counteract, or awe the regular deliberations and action of the constituted authorities, are destructive of this fundamental principle, and of fatal tendency.—They serve to organize faction, to give it air artificial and extraordinary force, to put in the place of the delegated will of the nation the will of party, often a small but artful and enterprising minority of the community; and, according to the alternate triumphs of different parties, to make the public administration the mirror of the ill concerted and incongruous projects of faction, rather than the organ of consistent and wholesome plans digested by common councils, and modified by mutual interests.

However combinations or associations of the above description may now and then answer popular ends, they are likely, in the course of time and things, to become potent engines, by which cunning, ambitious, and unprincipled men, will be enabled to subvert the power of the people, and to usurp for themselves the reins of government; destroying afterwards the very engines which have lifted them to unjust dominion.

Towards the preservation of your government and the permanency of your present happy state it is requisite, not only, that you steadily discountenance irregular opposition to its acknowledged authority, but also that you resist with care the spirit of innovation upon its principles, however specious the pretext. One method of assault may be to effect, in the forms of the constitution, altera-

tions which will impair the energy of the system; and thus to undermine what cannot be directly overthrown. In all the changes to which you may be invited, remember that time and habit are at least as necessary to fix the true character of governments, as of other human institutions:—that experience is the surest standard by which to test the real tendency of the existing constitution of a country:—that facility in changes, upon the credit of mere hypothesis and opinion, exposes to perpetual change from the endless variety of hypothesis and opinion: and remember, especially, that for the efficient management of your common interests in a country so extensive as ours, a government of as much vigor as is consistent with the perfect security of liberty is indispensable. Liberty itself will find in such a government with powers properly distributed and adjusted, its surest guardian. It is, indeed, little else than a name, where the government is too feeble to withstand the enterprises of faction, to confine each member of the society within the limits prescribed by the laws, and to maintain all in the secure and tranquil enjoyment of the rights of person and property.

I have already intimated to you the danger of parties in the state, with particular references to the founding them on geographical discrimination. Let me now take a more comprehensive view, and warn you in the most solemn manner against the baneful effects of the spirit of party generally.

The spirit, unfortunately, is inseparable from our nature, having its root in the strongest passions of the human mind.—It exists under different shapes in all governments, more or less stifled, controlled, or repressed; but in those of the popular form it is seen in its greatest rankness, and is truly their worst enemy.

The alternate domination of one faction over another, sharpened by the spirit of revenge natural to party dissension, which in different ages and countries has perpetrated the most horrid enormities, is itself a frightful despotism. But this leads at length to a more formal and permanent despotism. The disorders and miseries which result, gradually incline the minds of men to seek security and repose in the absolute power of an individual; and, sooner or later, the chief of some prevailing faction, more able or more fortunate than his competitors, turns this disposition to the purpose of his own elevation on the ruins of public liberty.

Without looking forward to an extremity of this kind (which nevertheless ought not to be entirely out of sight) the common and continual mischiefs of the spirit of party are sufficient to make it the interest and duty of a wise people to discourage and restrain it.

It serves always to distract the public councils, and enfeeble the public administration. It agitates the community with ill founded jealousies and false alarms; kindles the animosity of one part against another; foment occasional riot and insurrection. It opens the door to foreign influence and corruption, which finds a facilitated access to the government itself through the channels of

party passions. Thus the policy and the will of one country are subjected to the policy and will of another.

There is an opinion that parties in free countries are useful checks upon the administration of the government, and serve to keep alive the spirit of liberty. This within certain limits is probably true; and in governments of a monarchical cast, patriotism may look with indulgence, if not with favor, upon the spirit of party. But in those of the popular character, in governments purely elective, it is a spirit not to be encouraged. From their natural tendency, it is certain there will always be enough of that spirit for every salutary purpose. And there being constant danger of excess, the effort ought to be, by force of public opinion, to mitigate and assuage it. A fire not to be quenched, it demands a uniform vigilance to prevent it bursting into a flame, lest instead of warming, it should consume.

It is important likewise, that the habits of thinking in a free country should inspire caution in those intrusted with its administration, to confine themselves within their respective constitutional spheres, avoiding in the exercise of the powers of one department, to encroach upon another. The spirit of encroachment tends to consolidate the powers of all the departments in one, and thus to create, whatever the form of government, a real despotism. A just estimate of that love of power and proneness to abuse it which predominate in the human heart, is sufficient to satisfy us of the truth of this position. The necessity of reciprocal checks in the exercise of political power, by dividing and distributing it into different depositories, and constituting each the guardian of the public weal against invasions of the others, has been evinced by experiments ancient and modern: some of them in our country and under our own eyes.—To preserve them must be as necessary as to institute them. If, in the opinion of the people, the distribution or modification of the constitutional powers be in any particular wrong, let it be corrected by an amendment in the way which the constitution designates.—But let there be no change by usurpation; for though this, in one instance, may be the instrument of good, it is the customary weapon by which free governments are destroyed. The precedent must always greatly overbalance in permanent evil any partial or transient benefit which the use can at any time yield.

Of all the dispositions and habits which lead to political prosperity, religion and morality are indispensable supports. In vain would that man claim the tribute of patriotism, who should labor to subvert these great pillars of human happiness, these firmest props of the duties of men and citizens. The mere politician, equally with the pious man, ought to respect and to cherish them. A volume could not trace all their connections with private and public felicity. Let it simply be asked, where is the security for property, for reputation, for life, if the sense of religious obligation desert the oaths which are the instruments of investigation in courts of justice? and let us with

caution indulge the supposition that morality can be maintained without religion. Whatever may be conceded to the influence of refined education on minds of peculiar structure, reason and experience both forbid us to expect, that national morality can prevail in exclusion of religious principle.

It is substantially true, that virtue or morality is necessary spring of popular government. The rule, indeed, extends with more or less force to every species of free government. Who that is a sincere friend to it can look with indifference upon attempts to shake the foundation of the fabric?

Promote, then, as an object of primary importance, institutions for the general diffusion of knowledge. In proportion as the structure of a government gives force to public opinion, it should be enlightened.

As a very important source of strength and security, cherish public credit. One method of preserving it is to use it as sparingly as possible, avoiding occasions of expense by cultivating peace, but remembering, also, that timely disbursements, to prepare for danger, frequently prevent much greater disbursements to repel it; avoiding likewise the accumulation of debt, not only by shunning occasions of expense, but by vigorous exertions, in time of peace, to discharge the debts which unavoidable wars may have occasioned, not ungenerously throwing upon posterity the burden which we ourselves ought to bear. The execution of these maxims belongs to your representatives, but it is necessary that public opinions should co-operate. To facilitate to them the performance of their duty, it is essential that you should practically bear in mind, that towards the payment of debts there must be revenue; that to have revenue there must be taxes; that no taxes can be devised which are not more or less inconvenient and unpleasant; that the intrinsic embarrassment inseparable from the selection of the proper object (which is always a choice of difficulties) ought to be a decisive motive for a candid construction of the conduct of the government in making it, and for a spirit of acquiescence in the measures for obtaining revenue, which the public exigencies may at any time dictate.

Observe good faith and justice towards all nations; cultivate peace and harmony with all. Religion and morality enjoin this conduct, and can it be that good policy does not equally enjoin it? It will be worthy of a free, enlightened, and, at no distant period, a great nation, to give to mankind the magnanimous and too novel example of a people always guided by an exalted justice and benevolence. Who can doubt but, in the course of time and things, the fruits of such a plan would richly repay any temporary advantages which might be lost by a steady adherence to it; can it be that Providence has not connected the permanent felicity of a nation with its virtue? The experiment, at least, is recommended by every sentiment which ennobles human nature. Alas! is it rendered impossible by its vices?

In the execution of such a plan, nothing is more essential than that perma-

nent, inveterate antipathies against particular nations and passionate attachments for others, should be excluded; and that, in place of them, just and amicable feelings towards all should be cultivated. The nation which indulges towards another an habitual hatred, or an habitual fondness is in some degree a slave. It is a slave to its animosity or to its affection, either of which is sufficient to lead it astray from its duty and its interest. Antipathy in one nation against another disposes each more readily to offer insult and injury to lay hold of slight causes of umbrage, and to be haughty and intractable when accidental or trifling occasions of dispute occur. Hence, frequent collisions, obstinate, envenomed, and bloody contests. The nation, prompted by ill will and resentment, sometimes impels to war the government, contrary to the best calculations of policy. The government sometimes participates in the national propensity, and adopts through passion what reason would reject; at other times, it makes the animosity of the nation subservient to projects of hostility, instigated by pride, ambition, and other sinister and pernicious motives. The peace often, sometimes perhaps the liberty of nations, has been the victim.

So likewise, a passionate attachment of one nation for another produces a variety of evils. Sympathy for the favorite nation, facilitating the illusion of an imaginary common interest; in cases where no real common interest exists, and infusing into one the enmities of the other, betrays the former into a participation in the quarrels and wars of the latter, without adequate inducements or justifications. It leads also to concessions, to the favorite nation, of privileges denied to others, which is apt doubly to injure the nation making the concessions, by unnecessary parting with what ought to have been retained, and by exciting jealousy, ill will, and a disposition to retaliate in the parties from whom equal privileges are withheld; and it gives to ambitious, corrupted or deluded citizens who devote themselves to the favorite nation, facility to betray or sacrifice the interests of their own country, without odium, sometimes even with popularity; gilding with the appearances of a virtuous sense of obligation, a commendable deference for public opinion, or a laudable zeal for public good, the base or foolish compliances of ambition, corruption, or infatuation.

As avenues to foreign influence in innumerable ways, such attachments are particularly alarming to the truly enlightened and independent patriot. How many opportunities do they afford to tamper with domestic factions, to practice the arts of seduction to mislead public opinion, to influence or awe the public councils!—Such an attachment of a small or weak, towards a great and powerful nation, dooms the former to be the satellite of the latter.

Against the insidious wiles of foreign influence, (I conjure you to believe me fellow citizens) the jealousy of a free people ought to be constantly awake; since history and experience prove, that foreign influence is one of the most bane-

ful foes of republican government. But that jealousy, to be useful, must be impartial, else it becomes the instrument of the very influence to be avoided, instead of a defense against it. Excessive partiality for one foreign nation and excessive dislike for another, cause those whom they actuate to see danger only on one side, and serve to veil and even second the arts of influence on the other. Real patriots, who may resist the intrigues of the favorite, are liable to become suspected and odious; while its tools and dupes usurp the applause and confidence of the people, to surrender their interests.

The great rule of conduct for us, in regard to foreign nations, is, in extending our commercial relations, to have with them as little political connection as possible. So far as we have already formed engagements, let them be fulfilled with perfect good faith:—Here let us stop.

Europe has a set of primary interests, which to us have none, or a very remote relation. Hence, she must be engaged in frequent controversies, the causes of which are essentially foreign to our concerns. Hence, therefore, it must be unwise in us to implicate ourselves, by artificial ties, in the ordinary vicissitudes of her politics, or the ordinary combinations and collisions of her friendships or enmities.

Our detached and distant situation invites and enables us to pursue a different course. If we remain one people, under an efficient government, the period is not far off when we may defy material injury from external annoyance; when we may take such an attitude as will cause the neutrality we may at any time resolve upon, to be scrupulously respected; when belligerent nations, under the impossibility of making acquisitions upon us, will not lightly hazard the giving us provocation, when we may choose peace or war, as our interest, guided by justice, shall counsel.

Why forego the advantages of so peculiar a situation? Why quit our own to stand upon foreign ground? Why, by interweaving our destiny with that of any part of Europe, entangle our peace and prosperity in the toils of European ambition, rivalry, interest, humor, or caprice?

It is our true policy to steer clear of permanent alliance with any portion of the foreign world; so far, I mean, as we are now at liberty to do it; for let me not be understood as capable of patronizing infidelity to existing engagements. I hold the maxim no less applicable to public than private affairs, that honesty is always the best policy. I repeat it, therefore, let those engagements be observed in their genuine sense. But in my opinion, it is unnecessary, and would be unwise to extend them.

Taking care always to keep ourselves by suitable establishments, on a respectable defensive posture, we may safely trust to temporary alliances for extraordinary emergencies.

Harmony, and a liberal intercourse with all nations, are recommended by policy, humanity, and interest. But even our commercial policy should hold an equal and impartial hand; neither seek-

ing nor granting exclusive favors or preferences; consulting the natural course of things; diffusing and diversifying by gentle means the streams of commerce, but forcing nothing; establishing with powers so disposed, in order to give trade a stable course, to define the rights of our merchants, and to enable the government to support them, conventional rules of intercourse, the best that present circumstances and mutual opinion will permit, but temporary, and liable to be from time to time abandoned or varied as experience and circumstances shall dictate; constantly keeping in view, that it is folly in one nation to look for disinterested favors from another; that it must pay with a portion of its independence for whatever it may accept under that character; that by such acceptance, it may place itself in the condition of having given equivalents for nominal favors, and yet of being reproached with ingratitude for not giving more. There can be no greater error than to expect, or calculate upon real favors from nation to nation. It is an illusion which experience must cure, which a just pride ought to discard.

In offering to you, my countrymen, these counsels of an old and affectionate friend, I dare not hope they will make the strong and lasting impression I could wish; that they will control the usual current of the passions, or prevent our nation from running the course which has hitherto marked the destiny of nations, but if I may even flatter myself that they may be productive of some partial benefit, some occasional good; that they may now and then recur to moderate the fury of party spirit, to warn against the mischiefs of foreign intrigue, to guard against the impostures of pretended patriotism; this hope will be a full recompense for the solicitude for your welfare by which they have been dictated.

How far, in the discharge of my official duties, I have been guided by the principles which have been delineated, the public records and other evidences of my conduct must witness to you and to the world. To myself, the assurance of my own conscience is, that I have, at least, believed myself to be guided by them.

In relation to the still subsisting war in Europe, my proclamation of the 22d of April 1793, is the index to my plan. Sanctioned by your approving voice, and by that of your representatives in both houses of congress, the spirit of that measure has continually governed me, uninfluenced by any attempts to deter or divert me from it.

After deliberate examination, with the aid of the best lights I could obtain, I was well satisfied that our country, under all the circumstances of the case, had a right to take, and was bound, in duty and interest, to take a neutral position. Having taken it, I determined, as far as should depend upon me, to maintain it with moderation, perseverance and firmness.

The considerations which respect the right to hold this conduct, it is not necessary on this occasion to detail. I will only observe that, according to my understanding of the matter, that right, so

far from being denied by any of the belligerent powers, has been virtually admitted by all.

The duty of holding a neutral conduct may be inferred, without any thing more, from the obligation which justice and humanity impose on every nation, in cases in which it is free to act, to maintain inviolate the relations of peace and amity towards other nations.

The inducements of interest for observing that conduct will best be referred to your own reflections and experience. With me, a predominant motive has been to endeavor to gain time to our country to settle and mature its yet recent institutions, and to progress, without interruption, to that degree of strength, and consistency which is necessary to give it, humanly speaking, the command of its own fortunes.

Though in reviewing the incidents of my administration, I am unconscious of intentional error, I am nevertheless too sensible of my defects not to think it probable that I may have committed many errors. Whatever they may be, I fervently beseech the Almighty to avert or mitigate the evils to which they may tend. I shall also carry with me the hope that my country will never cease to view them with indulgence; and that, after forty-five years of my life dedicated to its service, with an upright zeal, the faults of incompetent abilities will be consigned to oblivion, as myself must soon be to the mansions of rest.

Relying on its kindness in this as in other things, and actuated by that fervent love towards it, which is so natural to a man who views in it the native soil of himself and his progenitors for several generations; I anticipate with pleasing expectation that retreat in which I promise myself to realize, without alloy, the sweet enjoyment of partaking, in the midst of my fellow citizens, the benign influence of good laws under a free government—the ever favorite object of my heart, and the happy reward, as I trust, of our mutual cares, labors and dangers.

GEO. WASHINGTON.

UNITED STATES,

17th September, 1796.

Mr. MANSFIELD. Mr. President, I wish to express my personal thanks, and I know the thanks of the Senate, to the distinguished Senator from Texas (Mr. BENTSEN) who has just delivered the Farewell Address of our first President.

George Washington was not only a man of his time but a man for all seasons.

As the distinguished Senator from Texas read Washington's Farewell Address, when he put into it the emotion which he felt, it brought back a feeling of love, not only for this country—which we love—but for this man, George Washington, who did so much to make this country what it was to become eventually. His emphasis on the fact of the interdependence between North and South, East and West, is a thesis which could well be restated today.

It is most appropriate that the distinguished Senator from Texas (Mr. BENTSEN) has delivered the Farewell Address on this day, when the first President of the United States to visit mainland China is now in Peking.

There have been other men who were President who visited China. Herbert Hoover, as a mining engineer, visited Manchuria and worked in Manchuria and north China many years before he became President. Ulysses S. Grant visited China and was received with full honors after he left the Presidency.

During George Washington's time, it took months to reach that far-away land, and, therefore, it would have been an impossibility for the Chief of State of this fledgling Republic to have made a journey of that duration.

It is interesting to note, though, that in 1784, Robert Morris, a signer of the Declaration of Independence, sent the first American clipper ship to trade with China. The year that President George Washington whom we honor here today, took the oath of office, 1789, 14 American ships were riding at anchor in the Pearl River off Canton in South China.

Today, there are no American ships in Chinese ports, nor have there been for almost 20 years.

But today the first actual President even to go to China is visiting in Peking. He has already been to Shanghai. He will go to Hangchow and perhaps one or two other places.

It is most appropriate that this man, who represents all of us in his capacity as President of the United States of America, is visiting a modern version of the "Old Middle Kingdom" and is doing so as the Chief of State of this Nation.

Mr. President, we have come a long way since George Washington's time. Sometimes I think that we would all be better off if we paid more attention to what George Washington had to say to his people and to his country in his Farewell Address of the 17th of September, 1796.

Again I want to commend the distinguished Senator from Texas (Mr. BENTSEN) for doing an extraordinarily effective, efficient, and outstanding job.

Mr. PASTORE. Mr. President, I should like to add my voice to that of the distinguished majority leader in complimenting our distinguished colleague from Texas (Mr. BENTSEN) for his magnificent reading of Washington's Farewell Address.

The Senator from Texas is endowed with a melodious voice which falls most pleasantly on the ear. His pace, his emotion, his posture, and his deep sincerity were readily evident to all.

I fully agree with the distinguished majority leader that much of the trouble we are experiencing today could have been avoided if we could turn time back and read more carefully and follow more closely the wise words uttered back in the 18th century by our first President of the United States.

I repeat, much of the turmoil, the travail, the distress, the disruption, and the destruction now agonizing the whole world today might have been avoided if we had adhered to the counsel of the first President of the United States.

It is counsel we would do well in this Senate not only to hear but to heed.

Mr. MOSS. Mr. President, I wish to add my words of commendation to the dis-

tinguished Senator from Texas (Mr. BENTSEN) who delivered the Farewell Address of our first President in such an effective and moving manner.

As has been commented on by the distinguished majority leader, and the distinguished Senator from Rhode Island (Mr. PASTORE), the Senator from Texas has done an extraordinarily good job in presenting the sound advice of our first President, which we try to follow by the practice of reading it each year in this Chamber on the occasion of the celebration of the anniversary of George Washington's birth.

Like the distinguished Senator from Rhode Island (Mr. PASTORE), I wish we would all give more adherence to George Washington's advice. We should have been following it all these years. It is well that we have this custom. The distinguished Senator from Texas has done an exceptional job in presenting it here to the Senate today.

Mr. BENTSEN. Mr. President, I wish to thank my distinguished friends, not so much for their words, but for the generosity which led them to exaggerate so beautifully concerning my delivery.

I must say this: I found it most enlightening to read the Farewell Address again. It is a great contribution which we should always keep in mind when considering the issues now facing us in Congress.

Mr. LONG subsequently said: Mr. President, in his absence I wish to extend my congratulations to the junior Senator from Texas (Mr. BENTSEN) for the admirable manner in which he delivered Washington's Farewell Address to us in this session. The Senator from Texas gave the message more meaning, more expression, and more life than I have heard given to it by those who have presented it during the 23 years I have been a Member of this body.

Obviously the Senator from Texas did not take lightly the task assigned to him by the Senate. The manner in which the message was presented showed that he had studied it carefully, had sought to find every hidden meaning that might be there, as well as every obvious intention of the message, and those of us who heard it will leave to profit by the experience we had here today.

I hope, Mr. President, that on future occasions those who have assigned to them the task of presenting Washington's Farewell Address, as did the Senator from Texas, will seek to emulate his example and seek, as obviously he did, to give the message the same type of expression and same meaning as though our first President were here to present it.

ORDER OF BUSINESS

The PRESIDING OFFICER (Mr. BYRD of West Virginia). Under the previous unanimous-consent order, the distinguished Senator from Utah (Mr. MOSS) will now be recognized for not to exceed 15 minutes.

SURFACE MINING AND PEOPLE

Mr. MOSS. Mr. President, a week ago today, I was flying in an Army helicopter

over portions of Tennessee and Kentucky looking at surface mining operations in those two States as a part of the work of the Subcommittee on Minerals, Materials, and Fuels.

My subcommittee has before it bills dealing with surface mining legislation and I felt it appropriate that we see at first hand mining in these States.

I express my sincere appreciation to the agencies of the Federal Government, the Departments of Defense, Agriculture, and Interior, and the Appalachian Regional Commission; the TVA officials and the many fine, conscientious technicians of the Division of Reclamation and Strip Mining for the States of Kentucky and Tennessee for providing expert technical advice, information, and planning. And I thank my colleagues, the Senators from these two States and the Governors of each of these States, for their welcome, hospitality and participation in the tour by the subcommittee.

I can report to you that this was a no-holds-barred trip. We saw the very worst examples of surface or contour mining and the scars of strip mining are terrible. There has been not only devastating degradation of the landscape, but there is human misery caused by slides, siltation, and water pollution which offend the people who live in the hollows.

Our observation of strip mining in Appalachia, particularly in the States of Tennessee and Kentucky, during this trip was planned to provide us with a cross section of mining situations—coal seams, mining methods, geographic conditions, and effectiveness of State regulation. Specifically, we observed access roads, high walls, single and multiple seam mining operations, spoil banks, slides, and acid mine water quality under the various measures of control specified by State laws. A range of damage and of reclamation requirements from prelaw, through early law, to present standards was observed.

It is fully recognized that environmental disturbances caused by unrestrained mining practices come from both surface and underground mining operations. Damages from underground mining occur in the form of acid mine drainage, abandoned hazardous mine openings, uncontrolled surface subsidence and solid mine waste accumulations that are unsightly and occupy considerable valuable land surface. In addition, air and water pollutants from these mine waste piles often damage the surrounding environment.

The committee visited sites of both active and abandoned surface and underground operations to get a better understanding of the problems associated with mining and mine reclamation. Mine sites in the State of Tennessee and Kentucky were selected because of the steep topography in order to provide understanding of the difficulty of reclaiming and restoring damaged surface mined lands.

Both States showed evidence of improved regulation in reclamation of mined areas from strip mining operations which proceeded in past years under situations ranging from those where there were no laws to the more sophisti-

cated operation in Kentucky under strong laws.

State officials of both Tennessee and Kentucky, however, expressed a request for help from the Federal Government. They need help in the uniformity of application of the laws, in enforcement of the laws and all the help they can get in technology.

Those past practices which have gone on unchecked must cease. Strip and auger operations in an unstable area, where there is a present danger of acid mine drainage must not be allowed. Toxic materials must be carefully and safely buried. Appropriate bench widths must be observed and the appropriate degree of slope allowed to be mined must be determined. And all of these requirements must be strictly enforced.

There are dedicated men and women in these two States who have carried for this Nation the great burden of trying to deal with these new and awesome mining operations. Those of us who come from Western States, for whom the mammoth surface mining operations for coal are only just beginning, recognize that the techniques which have been learned in Appalachia will go west. The experimentation with siltation dams, bench and slope widths, landscaping and reclamation which we saw will stand western operators in good stead.

We have seen a cross section of mining situations; enough to recognize that there must be Federal legislation. On the 24th of February at 9:30 a.m., in room 3110, the committee will hold its final day of hearing on the surface mining bills before us.

The issues as I see them developing from the proposed bills and the testimony which we have already heard include:

First. What lands will be covered—Federal, State, Indian and private?

Second. What minerals will be covered?

Third. What is the appropriate measure of responsibility between the Federal and State Governments and which agency or combination of agencies at the Federal level should have the administrative responsibilities?

Fourth. How shall we fund for enforcement and regulation. Suggested sources include appropriation, fines, fees and forfeitures from permits, bonds and sale of reclaimed lands.

Fifth. What reclamation standards and requirements should be written into the bills; should there be detailed provisions or general guidelines?

Sixth. Should there be a total, partial or outright banning of surface mining? Should there be prohibition of all surface mining of coal, or prohibition of coal mining underground in wilderness areas, or permissive mining in national forests at the discretion of the Forest Service?

Seventh. Time schedule. When would the legislation be operable?

Eighth. What provisions should be made for administrative and judicial review of determinations and requirements under the act?

Ninth. What must be done about orphan and other unreclaimed lands?

I am convinced that surface mining

must be assiduously controlled. However, the bill which the subcommittee reports out must recognize that this country is faced with an energy crisis. How we meet our essential energy needs will play an important part in the manner in which this country meets the needs of its people. One of the most critical areas of national importance today lies in balancing our requirements and responsibilities to arrive at a sound national energy policy. Meeting our projected energy requirements means meeting our duties and obligations to our people not only in providing the necessary energy but in providing necessary jobs. Most assuredly, this is not the time to close down going operations and throw more of our people out of work.

Recoverable domestic coal reserves probably exceed 1,600 billion tons. Surface mining is approaching 50 percent of all U.S. coal production. Our coal reserves must play an essential part in meeting our energy needs.

Glenn T. Seaborg has said:

I do not believe that we have to degrade the natural environment to meet reasonable energy demands. Neither do I believe that we must choose between exploiting sources of abundant energy to support mindless growth or entering into an age of equally mindless austerity enforced by power reductions for the alleged purpose of "saving the environment."

There is a middle road. It is essential that we meet our energy needs but it is also essential that we guard the manner in which we proceed. The committee did see successful reclamation efforts along with the bad. I have the utmost faith that this country, fully aware of its responsibilities to the environment, will, through an expenditure of energy and inventiveness, meet its full responsibilities to its people.

I am convinced that ways can be found to keep the coal industry viable, to meet our energy needs, and at the same time, provide essential reclamation.

ORDER OF BUSINESS

The PRESIDING OFFICER. Under the previous order, the distinguished junior Senator from Pennsylvania (Mr. SCHWEIKER) will now be recognized for not to exceed 15 minutes.

(The remarks of Mr. SCHWEIKER made at this point on the introduction of S. 3201 are printed in the Record under Statements on Introduced Bills and Joint Resolutions.)

TRANSACTION OF ROUTINE MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order there will now be a period for the transaction of routine morning business for not to exceed 30 minutes, with statements therein limited to 3 minutes.

ORDER FOR RECOGNITION OF SENATOR PEARSON TOMORROW

Mr. MOSS. Mr. President, I ask unanimous consent that tomorrow after the prayer by the Chaplain and after the

two leaders have been recognized, under the standing order, the Senator from Kansas (Mr. PEARSON) be recognized for not to exceed 15 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

MESSAGE FROM THE HOUSE

A message from the House of Representatives, by Mr. Hackney, one of its reading clerks, announced that the House had passed a bill (H.R. 12350) to provide for the continuation of programs authorized under the Economic Opportunity Act of 1964, and for other purposes, in which it requested the concurrence of the Senate.

HOUSE BILL REFERRED

The bill (H.R. 12350) to provide for the continuation of programs authorized under the Economic Opportunity Act of 1964, and for other purposes, was read twice by its title and referred to the Committee on Labor and Public Welfare.

QUORUM CALL

Mr. MOSS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ALLEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

(The remarks Mr. ALLEN made at this point on the introduction of Senate Joint Resolution 207 are printed in the Record under Statements on Introduced Bills and Joint Resolutions.)

ORDER OF BUSINESS

The PRESIDING OFFICER. Is there further morning business?

Mr. MOSS. Mr. President, I will suggest the absence of a quorum so that Senators who may not have had the opportunity to speak in the morning hour may do so.

The PRESIDING OFFICER. The absence of a quorum has been suggested. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

PRESIDENT NIXON'S JOURNEY FOR PEACE

Mr. DOLE. Mr. President, by resolution of the Congress this historic day is commemorated as one of united support for President Nixon's efforts to bring a relaxation of international tensions and achieve an enduring and just peace. The search for peace is a universal quest, and the Congress has, I believe, spoken for each of our citizens and all of mankind in expressing sincere and fervent

hopes for the success of the President's undertakings in this cause.

I am sure these hopes were in the minds of millions of Americans and people around the world who watched the President's arrival in China last night. Seldom has there been an event signifying a more profound step in the efforts of man to fulfill the potentials of his civilization.

There have never before been two more powerful nations in terms of material and human resources. Never before have two nations possessing this power been isolated and alienated for so long a period of time. And, thankfully, never before have two such nations attempted to reach out to find ways that will enable each to fulfill its dreams, pursue its own course and yet avoid a confrontation that could plunge both into war, chaos, and destruction.

That handshake at the Peking airport between President Nixon and Premier Chou En-lai was more than the act of two leaders of two nations. It was something seen all too rarely in the record of men on this earth.

It was an effort to build—without destruction preceding it. It was a gesture for peace—without a war imposing it. It was an attempt to understand, to communicate, to share and nurture what is common to all men—the hope for peace.

I am tremendously proud to be an American today. I am proud of our Nation's ideals and principles. And I am proud that our President, standing firmly on those ideals and principles, is acting to preserve them and insure their survival in a changing and complex world. And on this national day of unity I believe all Americans share this pride.

QUORUM CALL

Mr. MOSS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. ALLEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. MOSS). Without objection, it is so ordered.

OPPOSITION TO FORCED BUSING

Mr. ALLEN. Mr. President, from time to time I make reports to the people of Alabama by a radio message, and this morning I made such a report to the people of Alabama regarding the effort to bring to an end the vicious and destructive forced busing of little children in an effort to attain a mathematical racial balance in public schools. I ask unanimous consent that that radio message be printed in the Record at this point.

There being no objection, the report was ordered to be printed in the Record, as follows:

OPPOSITION TO FORCED BUSING

A new and bitter floor fight is under way in the United States Senate in an effort to bring to an end the vicious and destructive forced busing of boys and girls in order to obtain a mathematical racial balance in public schools.

For three years I have been saying on the floor of the Senate that if the North were required to observe the same tyrannical court decisions and rulings of HEW as have been required of the South, we would see changes in their attitudes and approach to the serious problems of education.

Now that Northern schools are facing court orders calling for forced busing, public pressures are causing Northern lawmakers to listen again to what we southerners have been saying.

Just last week Senator Jackson discovered the value of Freedom of Choice, and Senator Griffin, the Republican whip from Michigan, is seemingly trying to change directions and he is being followed by a number of others. Our message has even gotten into the White House where the President announced his opposition to busing for the purpose of racial balance, although he has refrained from committing himself to a course of action.

This turn of events gives encouragement to those of us who have been fighting against destruction of our public schools, and I would welcome the President's assistance in calling to a halt the court-ordered practice of busing.

I have maintained from the very beginning that the fight forced busing is above politics. What is at stake is the future of public education in the United States.

We in the South have already experienced and are suffering the disastrous effects of plans and orders of the Federal judiciary and of the social planners of the Department of Health, Education and Welfare. Forced busing is destroying our public schools. It is causing parents and the public to withdraw their support of public education and it is making it well-nigh impossible for our children, black and white, to receive a good education.

Nationwide polls show that the vast majority of Americans, black and white, are dead set against forced busing of children from their neighborhood schools. When black parents in Detroit were asked to list in order their desires for education, they overwhelmingly named quality teaching as top priority. Almost 70 percent of the parents polled were against forced busing.

I believe that a properly worded constitutional amendment may be the best method of clipping the wings of the Federal Judiciary. Three years ago I introduced a bill in the Senate that would have brought this result, but liberal forces defeated it. I have just introduced a new proposal and am co-sponsoring others. But I realize that a constitutional amendment faces a rocky road and would take at least two years for ratification even under the most favorable conditions.

For this reason, I am going to push for action by the National government and the National administration on three fronts: The passage, first, of a statute outlawing forced busing. And then I'd like to see action by HEW in stopping busing plans which it submits to the Federal courts. And then I'd like to see a changed attitude on the part of the Federal judiciary, all the way up to the Supreme Court.

The irony of forced busing is that wherever court orders and HEW plans require school boards to spend hundreds of thousands of tax dollars providing unneeded and unwanted transportation, that means fewer tax dollars available for improving the quality of teaching, for more libraries and better school buildings and for greater educational opportunities for our children. In their mad rush to concoct illogical and impractical plans for social change, the bureaucrats and Federal judges purposefully seem to neglect the fact that quality education for the individual child is the most important consideration. I can assure Alabamians—white and black—that my concern will continue to be to see that every child in Alabama and the Nation has the opportunity to obtain a good education.

QUORUM CALL

The PRESIDING OFFICER. Is there further morning business?

Mr. GRIFFIN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. MCGEE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

RADIO FREE EUROPE AND RADIO LIBERTY

Mr. MCGEE. Mr. President, the subject I wish to comment upon is the controversy now going on in this body with regard to Radio Free Europe and Radio Liberty. We have had honest differences of opinion on this matter in recent years, particularly in the Committee on Foreign Relations, and we have sought to work our wisdom to arrive at a collective judgment of all the members of the committee as well as our colleagues in the House of Representatives. Yet we remain divided and separated by our basic differences.

What I wanted to say about these two programs is by way of updating information on their current operations. Updating to stress that, perhaps because of the Senate's concern about the program and keeping it as up to date with the real world as possible, both programs have really been taken out of the cloak-and-dagger category. They have been removed from the concealment of the white trenchcoats and have been brought out into the open. But they are still beaming their messages of news and information about the Western World to the people behind the Iron Curtain, and that is what is important.

I know there are those among my colleagues on this side of the aisle who characterize these programs as an archaic reflection of the cold war interval of our history. But I think that not only does a disservice to both programs, but tortures the purpose of their impact, which is strictly information.

I have just come back from a visit to some of the countries behind the Iron Curtain, Mr. President, and I can say that while I was there, this point was made to me by people who are now, at this very moment denied access to the news in their locally controlled newspapers, which in turn are controlled by monolithic-government decisions. The only other point of view which they have access to, in addition to the material which is given to them by their government-controlled sources, comes from these two sources—Radio Free Europe and Radio Liberty.

This is what makes the difference. Now that we have arrived, in effect, at a detente in Europe between the blocs that emerged in the wake of World War II, the one thing that is going for an improvement in relations is the opening of channels of information so that each side can see the most of the other side, and understand. One of those instru-

mentalities remains the radio programs that are currently beamed from Munich into that part of the world.

Therefore, I think that this very moment, when we are beginning to realize the changes and the breakthroughs that the impasse has made possible by avoiding open hostilities, would be the very worst time to suddenly cut off these programs or use parliamentary tactics for delaying action upon them.

We serve nobody well, least of all ourselves, in that kind of approach. Many times, individual citizens on the street in some of the countries I visited—and even in two instances officials of their governments—stressed how important it was for them to establish more contacts with the United States, more understanding of the West, not less. But they were constrained in doing so because of the higher decisions made over the bloc countries.

So, whatever else, I think it is important that we address ourselves to these peaceful means, these nonviolent techniques, for chipping away at the walls that separate people. It is only when people can associate with people, it is only when ideas can interchange and be interchanged, that we can genuinely arrive at a common base of understanding.

At this particular moment, when we have the SALT talks underway, when we have an admitted new atmosphere between the East and the West, when our President is in another and very strange part of the world on a significantly important mission, it ill behooves us to abandon these channels of information to a part of the world that has said it hungers for more information. They do not have to agree with us, but they want the new sources of news.

We are told by some critics that this could be done through the Voice of America. That misses the point, Mr. President. It misses the point. The Voice of America is an official organ and expression of our Government. We are trying to avoid the imposition of a government pattern or a government profile or a government point of view. We are trying to increase instead the channels of contact and understanding.

Radio Free Europe and Radio Liberty, when removed from the Voice of America, removed from the stringencies of clandestine operations as in their very inception, become an even richer factor in breaking down the walls that separate the two worlds.

To continue with my prepared remarks:

Tomorrow we face the prospect that vital funds will be cut off for the operation of Radio Free Europe and Radio Liberty unless there is congressional action approving authorizing legislation for these two programs.

There are some in this body who want both these operations terminated. Their reasons are varied, but the major objections seem to be the following:

The question of whether their broadcasts help or hinder efforts to normalize East-West relations.

American and European opinion believes these radios to be outdated and obsolete—relics of the "cold war."

The radios are a part of some mysterious deception.

The radios, if they have contemporary value, would find financial support in Europe as well as in the United States.

I would like to take this opportunity to deal with these assertions in an effort to clarify the misconceptions surrounding these two radios. Both Radio Free Europe and Radio Liberty, in the opinion of those who have closely studied their operations, perform a significant service in communicating to the peoples of the Iron Curtain countries of Europe.

There is more than ample evidence that the U.S. Congress strongly supports their operation. Last August the Senate, by a voice vote, passed a 1-year authorization bill for both radios. In November 1971 the House, by a large majority, passed a 2-year bill. Both Houses, by their votes, took the position that these radios were valuable assets which should be continued. Both indicated they should be subjected to careful study with regard to their future.

It is asserted that American and European opinion holds the radios to be outdated and obsolete. However, the record reveals just the opposite view is true.

The majority of those American papers commenting on the question have done so positively and overwhelmingly. Perhaps the most succinct statement of consensus of American press opinion is the Washington Post's editorial of June 26, 1971, which concludes:

Detente, if it means anything, means widening the West's contacts with the East, not helping the East to seal off its people from the West. It means the exchange of people, goods, words and ideas. This is the essential business of Radio Free Europe and Radio Liberty. The Congress, in its right-minded determination to shake the stations free of the CIA, should not lose sight of the reason for letting them continue it.

In this morning's publication of the New York Times an editorial concluded:

We believe the work of these two stations has a lasting validity and importance, but even those of a different view must realize that the existence of these organizations provides potential bargaining counters for President Nixon's Moscow visit next May. At the least, all concerned should be able to agree that a final decision on the future of Radio Free Europe and Radio Liberty cannot be made until Mr. Nixon has returned from the Kremlin, and Congress can take a hard look at the post-Moscow situation of American foreign policy.

The Western European press has likewise supported the two radios. The London Daily Telegraph stated on June 9, 1971:

There is now talk of revising the status of these stations, and signs of a "liberal" offensive on their freedom. It is odd that the self-appointed defenders of civil liberty in the West should have so little concern for the same liberties in the East. Would it really make the world any safer or the Soviet leaders any nicer if our last thin line of communication with the people of the Communist world were cut?

The Frankfurter Allgemeine Zeitung also wrote last year that—

The station is termed an "inciting station" in East bloc polemics. The reason: it breaks the regimes' news monopoly, and informs the population . . . quite frequently about events in their own country which were intended to be kept secret.

Favorable editorials have been printed by most of the major papers of Western Europe. Earlier this month I was in Germany where I delivered a paper to a NATO conference in Munich. And while there, I had the occasion to reevaluate the two operations. Everywhere I went I was personally made aware of the valuable service both stations render. Likewise, less than 2 weeks ago I visited behind the Iron Curtain in Southeastern Europe. Even there I encountered a strong disposition among both officials and private citizens and an expressed will to increase contacts with the United States, including better communications as well as more trade and cultural exchanges. One spokesman in particular stressed the difficulty his people have in getting news from "the outside"—meaning the U.S.A.

For some it is still a fundamental question as to whether the broadcasts of Radio Free Europe and Radio Liberty help or hinder efforts to normalize East-West relations.

However, it is interesting to note that a key clause in the Universal Declaration of Human Rights adopted by the United Nations General Assembly on December 10, 1948, was officially endorsed by the Soviets. Article 19 of that Declaration states:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers.

Broadcasts have not been a hindrance to working out problems which divide the East from the West. While much remains to be done and serious problems face us, there have been some significant steps forward within the past 2 years. We could cite such things as the SALT talks which are now going forward; the completion of the West German treaties with Poland and the Soviet Union which now await ratification; and the opening of possibilities for some progress on a mutual and balanced forces reduction. The Berlin talks were concluded with agreement among the four occupying powers and we have recently had the announcement of the President's planned trip to Moscow.

Concurrent with these Government-to-Government talks, we have seen a stepping up on the part of the Eastern European governments of their efforts at increasing trade and their attempts at obtaining the benefits of a much greater input of Western technology into their economies. We have also tried to broaden our economic and technological relations with the Eastern European nations.

Broadcasting has not prevented this process. If the Soviet Union really believed it did, I doubt if they would devote more than 330 hours a day in 78 languages to conduct what it calls the ideological struggle against imperialism. As Janusz Kolczynski, the Director of the Polish Institute for Research in East-West Relations, said in a Moscow conference last year:

Our concept rules, as is well known, that peaceful co-existence does not extend to the sphere of ideology, that there cannot be a truce in this sphere.

The fact is that both East and West are extensively engaged in international radio communication. It is also a fact that East-West negotiations are proceeding on a variety of issues.

Agreements are reached on matters of perceived mutual interest. International broadcasting does not interfere with that process. Indeed, real normalization will become negotiable only with the further evolution of the Communist purpose. The full, free flow of information is so indispensable to that process.

The notion that Radio Free Europe and Radio Liberty engage in "cold war polemics" or seek to incite revolution is one of the myths these radios have had to live with for a long time. That argument, as well as the assertion that money spent on the radios might be better spent on cultural exchange, is most ably, refuted by a prominent former Polish official, Henryk Birecki who wrote:

These two activities are ultimately serving the same goal in entirely different ways. They should never be contrasted.

I was head of the Department of Cultural Exchanges in the Polish Foreign Office from 1960 to 1968. From the other side of the negotiating table I could see how hard and often without success the American diplomats had to fight for each award of a scholarship . . . or permission for an American ensemble to visit Poland. It must be remembered that, of necessity, cultural exchanges may embrace only a limited number of people and are subject to control, consent and restrictions of the respective government which may discontinue them at will when they cease to serve their own interests. Foreign broadcasts are the only line of direct communication with millions of people in the Soviet bloc countries which are entirely independent of censorship and influence of the authorities.

As a member of the collective leadership in the Polish Foreign Office and a close associate of the late Adam Rapacki, Minister of Foreign Affairs and a Politburo member, I had an opportunity to observe from inside the impact of Radio Free Europe on the ruling elite. I can state that literally everybody in this inner circle of power, including Gomulka himself, was assiduously following Radio Free Europe broadcasts. Ministers used to start their working day by reading monitoring bulletins of RFE broadcasts. My own habit became so deeply rooted that when I became an exile in 1968, I sold some of my few remaining valuables to buy a good radio set in order to listen in on Radio Free Europe. Even abroad, only from this radio station could I learn what was going on in my country.

Few people in the West realize how anxious the rulers in the totalitarian system are to learn the authentic views of the opposition whose freedom of expression they themselves have suppressed. To some extent Radio Free Europe has become the voice of the silent opposition. It plays this role in a responsible, sometimes even overcautious, manner. RFE news and commentaries are topics of daily discussions at all levels including the members of the Central Committee of the Communist Party and the governmental offices. Communist leaders who have become prisoners of their own monopoly of information need this radio for their own private enlightenment, but at the same time fear its impact on others.

This eloquent letter, written last summer to the Washington Star, says a great deal about the impact of the very special type of broadcasting represented by Radio Free Europe and Radio Liberty. Broadcasting which can kindle the type

of relationship which this letter reflects, cannot be simply taken off the news wires of UPI, AP, or Reuters. Careful research into the developments in the country of each audience is mandatory as is careful and objective analysis of trends which must often be pieced together from fragments of censored domestic news. This type of broadcasting is not the business of the official U.S. broadcasters, the Voice of America.

Presenting a full day's programming to their audiences and maintaining a constant contact with the domestic issues listeners are concerned with is a demanding task—the demands in time, personnel, equipment, and management are substantial, much greater than are the demands on each of the language services of the Voice of America which broadcasts perhaps 2 or 3 hours daily to its audiences and is focusing primarily on much more readily provided United States and international news. I believe it to be a mistake to compare Radio Free Europe and Radio Liberty to the Voice of America as it would be a mistake to compare them to CBS, ABC or NBC. They are different types of broadcasters with different functions which do not duplicate each other. For the service they provide and the impact they have, their cost is not excessive.

Now, it has also been asserted that the radios are a part of some mysterious chain of deception. This is hardly the case. The radios are currently being publicly funded through a continuing resolution. Both the bill passed by the Senate, which would fund the radios through the Department of State only until June 30, and the bill passed by the House which would fund them through the chairman of the proposed Study Commission, provide for public funding. On this matter, the desire of Congress for overt financing is clearly being met. It is time to cutaway from this issue the clouds of suspicion and look at these radios for what they are. We should study them as they are viewed by objective examiners and create for them the legislative structure of support they deserve. At this late date in the fiscal year, it seems to me we have only the choice of following the guidance offered by the Congressional Research Service Study which the Committee on Foreign Relations asked us in its July 30 report to wait for or to create—a new broader Commission to come up with new findings in 1973 in accordance with the bill passed in the House.

As to the argument that if the radios had contemporary value, they would find financial support in Europe as well as in the United States, I question the validity of such an assertion. I do not believe that the radios can make a serious effort to seek public financial support in the United States. However, I believe we should pursue the cost-sharing route.

Finally, I would like to refer my colleagues to a column written by Rowland Evans and Robert Novak which appeared in the February 17, edition of the Washington Post. They refer to two studies compiled by the Library of Congress Congressional Research Service into the efficacy of continuing the operations of both radios. Draft reports warmly praised the

two programs and recommended continued U.S. financing.

According to the columnists, one report said Radio Free Europe "contributes substantially to preserve the reservoir of good will toward the U.S."—by Eastern Europeans.

In some cases regimes have grudgingly adopted some features desired by their publics and supported by Radio Free Europe.

As Evans and Novak point out, the other Library of Congress report suggests that—

Radio Liberty encourages detente, amelioration of international differences through negotiations, strengthening of the United Nations as an instrument of peace and creation of a world system based on the rule of law.

The evidence is overwhelming in support of both Radio Free Europe and Radio Liberty. Therefore, I believe that the Congress should act with dispatch in approving the authorizing legislation for both operations.

I ask unanimous consent to have printed in the RECORD an excellent editorial published in the New York Times this morning, which makes some of the same points.

I think it behooves us to move on this. We are only frittering away our own interests. We are only wasting away our own opportunities; no one else's.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

SAVING FREE VOICES

For a generation now, Radio Free Europe and Radio Liberty have contributed enormously to enlarging the market place of ideas in Eastern Europe and the Soviet Union. Their transmissions have made available to those countries factual news of the outside world that the governments involved would have preferred their subjects did not know. In addition, these stations have broadcast the writings of such dissidents as Nobel Prize-winner Aleksandr Solzhenitsyn, whose masterly novels and stories are prohibited in the Soviet bloc. A Library of Congress study of these stations, made at the request of the Senate Foreign Relations Committee, has paid high tribute to these organizations' contributions toward liberalization of the Soviet world.

But now both these stations are threatened with extinction tomorrow unless House and Senate conferees end a Congressional stalemate. This situation arose because each chamber voted a different bill authorizing the continuation of these broadcasts.

If the deadlock kills Radio Free Europe and Radio Liberty, the chief gainers will be the Soviet bloc's hardliners who hate the two radio stations as allies of the liberal and progressive elements in the Communist world. Moreover, the demise of these broadcasts because of the inability of House and Senate conferees to agree would hardly project a flattering view of the American legislative system, nor would it add to American prestige for Europeans to see an important political question decided by a mere technical stratagem.

We believe the work of these two stations has a lasting validity and importance, but even those of a different view must realize that the existence of these organizations provides potential bargaining counters for President Nixon's Moscow visit next May. At the least, all concerned should be able to agree that a final decision on the future of Radio Free Europe and Radio Liberty cannot be made until Mr. Nixon has returned from the

Kremlin, and Congress can take a hard look at the post-Moscow situation of American foreign policy.

COMMUNICATIONS FROM EXECUTIVE DEPARTMENTS, ETC.

The ACTING PRESIDENT pro tempore (Mr. GAMBRELL) laid before the Senate the following letters, which were referred as indicated:

REPORT ON DEPARTMENT OF THE ARMY RESEARCH AND DEVELOPMENT CONTRACTS

A letter from the Deputy Assistant Secretary of the Army (R. & D.), transmitting, pursuant to law, a report on Department of the Army research and development contracts, for the 6-month period ended December 31, 1971 (with an accompanying report); to the Committee on Armed Services.

REPORT ON MORTGAGE SETTLEMENT COSTS

A letter from the Administrator of Veterans' Affairs, and Secretary of Housing and Urban Development, transmitting, pursuant to law, a report on mortgage settlement costs (with an accompanying report); to the Committee on Banking, Housing and Urban Affairs.

REPORT OF NATIONAL ADVISORY COUNCIL ON INTERNATIONAL MONETARY AND FINANCIAL POLICIES

A letter from the Secretary of the Treasury, transmitting pursuant to law, a report of the National Advisory Council on international monetary and financial policies, for the year ended June 30, 1971 (with an accompanying report); to the Committee on Foreign Relations.

REPORTS OF THE COMPTROLLER GENERAL

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Audit of Payments From Special Bank Account to Lockheed Aircraft Corporation For the C-5A Aircraft Program During the Quarter Ended December 31, 1971", Department of Defense dated February 18, 1972 (with an accompanying report); to the Committee on Government Operations.

A letter from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Incomplete Installation of the Management Accounting System For Procurement of Equipment and Missiles", Department of the Army, dated February 18, 1972 (with an accompanying report); to the Committee on Government Operations.

REPORT OF OFFICE OF COAL RESEARCH

A letter from the Secretary of the Interior, transmitting, pursuant to law, a report of the Office of Coal Research, for the year 1972 (with an accompanying report); to the Committee on Interior and Insular Affairs.

REPORT ON ALCOHOL AND HEALTH

A letter from the Secretary of Health, Education, and Welfare, transmitting, pursuant to law, a report on alcohol and health (with an accompanying report); to the Committee on Labor and Public Welfare.

REPORT ON HIGHWAY RELOCATION ASSISTANCE

A letter from the Secretary of Transportation, transmitting, pursuant to law, a report on highway relocation assistance, dated January 1972 (with an accompanying report); to the Committee on Public Works.

PETITIONS

Petitions were laid before the Senate and referred as indicated:

By the ACTING PRESIDENT pro tempore (Mr. GAMBRELL):
A resolution adopted by the Diocese of Washington, Washington, D.C., supporting

the President of the United States in his efforts to end American military involvement in Southeast Asia; to the Committee on Foreign Relations.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first time and, by unanimous consent, the second time, and referred as indicated:

By Mr. SCHWEIKER:

S. 3201. A bill to expand the scope of the National Heart and Lung Institute, to provide for special emphasis on the prevention of arteriosclerosis and the creation of cardiovascular disease prevention centers, and for other purposes. Referred to the Committee on Labor and Public Welfare.

By Mr. TALMADGE:

S. 3202. A bill for the relief of Miss Marilyn Ann Mucha. Referred to the Committee on the Judiciary.

By Mr. DOLE (for himself and Mr. GRIFFIN):

S. 3203. A bill to amend the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, in order to extend under certain circumstances the expiration date specified in a power of attorney executed by a member of the Armed Forces who is missing in action or held as a prisoner of war. Referred to the Committee on Armed Services.

By Mr. FANNIN:

S. 3204. A bill to amend title IV of the Social Security Act to permit greater flexibility in State plans for aid and services to needy families with children. Referred to the Committee on Finance.

By Mr. ALLEN (for himself and Mr. ERVIN):

S.J. Res. 207. A joint resolution proposing an amendment to the Constitution of the United States relating to open admissions to public schools. Referred to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. SCHWEIKER:

S. 3201. A bill to expand the scope of the National Heart and Lung Institute, to provide for special emphasis on the prevention of arteriosclerosis and the creation of cardiovascular disease prevention centers, and for other purposes. Referred to the Committee on Labor and Public Welfare.

HEART DISEASE PREVENTION ACT OF 1972

Mr. SCHWEIKER. Mr. President, I send to the desk for appropriate reference a bill designed to accelerate national efforts to attack heart disease. Specifically, my bill will implement certain of the recommendations of the National Heart and Lung Institute task force report on arteriosclerosis. The task force urged leadership by the Federal Government in a major Federal commitment for the prevention and control of cardiovascular diseases, the Nation's No. 1 killer.

The three major provisions of the bill would establish:

National centers for the prevention of arteriosclerosis.

Cardiovascular disease prevention clinics.

An Office of Health Education within the National Heart and Lung Institute.

Heart and blood vessel diseases are the leading cause of death in the United States, killing more than 1 million people

each year. Heart attacks alone claim 600,000 lives. It is estimated that 27 million Americans suffer from some form of cardiovascular disease. Of all deaths in the United States 54.1 percent are due to cardiovascular disease. By contrast, 16.8 percent of all deaths are due to cancer. Another statistic, that is both depressing and yet promising, is that six times more people per unit of population are killed in the country by heart disease than in Japan. Our mortality rate for heart disease is six times higher than the rate for Japan. This should alarm us to the danger and yet point out, perhaps, that we can change the rather sad statistics.

A little investment of Federal money in research should go a long way toward giving the opportunity to many Americans to live much longer than they do today.

The National Heart and Lung Institute task force on arteriosclerosis was established in 1970 to develop a long-range plan to combat heart disease. The task force deliberated for 15 months on the problem of hardening of the arteries, or arteriosclerosis, which accounts for about 62 percent of all cardiovascular deaths. There were 16 people on this task force. They were representative of all disciplines and specialties in heart disease and came from institutions spread throughout the country. This group then met with 16 other panels of experts in specific areas. They met at various locations around the country and discussed many of the special problems like sudden death, heart attack, or heart failure.

The task force came up largely with recommendations in five major areas. One, they felt that we did not yet know enough about the cause of the disease at the cellular level, and recommended additional research. They indicated that we do not have enough specialists in this area of all kinds, whether it be for children, or adults, or surgery, and therefore they felt that we should have more people working in the area of heart disease. The main new recommendations had to do with developing new national resources to combat the killer. They recognized that over the past 20 years, the American public invested \$2 billion to study this problem and that a lot of new information had been found with this research. It was now timely to bring this information to the public in a way that could be practically introduced into the American practice of medicine, and into the American way of life. Therefore, their new recommendations were to develop a new program of public education, to make the public aware of what they could do for themselves; to make a new program of prevention which would center around new clinics, to show the people how they could use this information and then develop a new series of national centers for arteriosclerosis in which we could now begin to bring together more efficiently some of the expertise for studying the total problem, which is fragmented in our national system today.

In implementing these recommendations the bill provides for:

First. Establishment of a limited number of national centers for arteriosclerosis at major medical centers. In terms of facilities and staff, these would

be several times larger than anything currently designated as arteriosclerosis centers. These would be concerned with multidisciplinary approaches to all facets of the arteriosclerosis problem and actively engaged in screening programs to identify individuals at high risk of arteriosclerosis, particularly those in the younger age groups.

Second. Establishment of 10 model cardiovascular disease prevention clinics within the framework of existing programs to first, develop improved methods of detecting high-risk individuals; second, develop improved methods of intervention against risk factors; and third, develop trained manpower highly skilled in cardiovascular prevention. These clinics would be served by a central coordinating unit that would develop standardized procedures for diagnosis, treatment, and data collection.

Third. Creation of an Office of Health Education within NHLI to serve as a clearinghouse for information on arteriosclerosis, particularly the importance of diet, hypertension, obesity, and cigarette smoking, all of which have been shown to have some marked effect on the mortality rate relating to heart disease.

The centers would have as their main goal developing the new knowledge in people that could accelerate our ability to prevent the disease. Prevention is only one aspect, however. We are also concerned with developing new techniques of diagnosis so that the disease can be detected early; and secondly we have to deal with the problem of treating those people that already have the disease. Putting it in that environment would permit work with the experts from a wide variety of disciplines. Whether it be from basic chemistry, or physiology, or drug development, heart surgery, cardiology, clinical medicine, what needs to be done now is the study of the disease in its entirety by all the people that are interested in bringing their great knowledge to bear on solution of this problem. In the past many of these people have been working and doing research on heart disease, but they have been doing it separately and therefore there has been a time lag and an information lag in some respects between being able to use the information that has been developed in one laboratory and bringing it to importance in the practical sense in another location.

The clinics are oriented toward the population, rather than toward the scientists. Actually, the reason we invest in a program of heart research is to reduce the death rate from heart disease and to prevent the disease. The clinic mechanism then would allow us to develop with people practical ways that they can help themselves use this new information to prevent heart disease. Because some of what needs to be done relates to the life style of the American public, the American society, we must therefore work with the people to allow them to change their life style in a way that will allow them to pursue the same other social goals, but not accelerate the development of heart disease. For example, they might consider how to change their diet, or whether they should

give up smoking, or how they could do that. This is a different type of prevention than taking a vaccine.

The office of Health Education will provide for the public as well as for the profession—the medical profession and the allied health professions—better information about what is being done and what can be done to reduce the risk of heart disease. It will be responsible to develop an educational program which will translate technical, medical information into practical, useful information that the public can utilize and understand.

The United States has the worst rate of heart disease of any industrialized country in the world. Of all the deaths of Americans between 35 and 64, approximately 40 percent are due to heart attacks. This bill seeks to create an apparatus to deal with this serious problem.

Mr. President, I ask that a copy of the bill and additional data regarding mortality rates and the economic costs of cardiovascular disease prepared by the American Heart Association be included in the RECORD at this point.

There being no objection, the bill and data were ordered to be printed in the RECORD, as follows:

S. 3201

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act shall be known as the "Heart Disease Prevention Act of 1972".

STATEMENT OF PURPOSE

SEC. 2. It is the purpose of this Act to—

(1) provide for the creation of centers concerned with the study and research of arteriosclerosis;

(2) provide for the establishment of model cardiovascular disease prevention centers within the framework of the existing programs; and

(3) provide for a clearinghouse for information concerning arteriosclerosis and cardiovascular disease within the National Heart and Lung Institute.

AMENDMENT TO THE PUBLIC HEALTH SERVICE ACT

SEC. 3. Part B of title IV of the Public Health Service Act is amended by adding at the end thereof the following new sections:

"NATIONAL CENTERS FOR THE PREVENTION OF ARTERIOSCLEROSIS"

"SEC. 415. (a) The Director of the National Heart and Lung Institute is authorized to provide for the establishment of new multidisciplinary centers for the study of arteriosclerosis including its prevention, epidemiology, genesis, clinical manifestations and treatment and the screening of individuals to determine those who are high risk in relation to arteriosclerosis. Such centers are to be located at major medical centers.

"(b) Payments under this section may be used for—

"(1) construction;

"(2) staffing and other basic operational costs, including such patient care costs as are required for research;

"(3) training, including training for allied health professions personnel; and

"(4) demonstration purposes.

"(c) Support under this section shall not exceed \$10,000,000 per year per center. Support of a center may be for a period of not to exceed three years and may be extended by the Director for additional periods of not more than three years each, after the review of the operation of such center by an appropriate scientific review group.

"CARDIOVASCULAR DISEASE PREVENTION CLINICS"

"SEC. 416. (a) The Director of the Heart and Lung Institute is authorized to establish ten model cardiovascular disease prevention clinics throughout the United States within the framework of existing programs. The purpose of such clinics shall be—

"(1) to develop improved methods of detecting high risk individuals;

"(2) to develop improved methods of intervention against high risk factors; and

"(3) to develop highly skilled manpower in cardiovascular disease prevention.

"(b) Such clinics shall be served by a central coordinating unit that shall be responsible for the development of standardized procedures for diagnosis, treatment, and data collection in relation to cardiovascular disease.

"OFFICE OF HEART HEALTH EDUCATION"

"SEC. 417. There is hereby established within the National Heart and Lung Institute an Office of Education which shall provide a program of heart health education for public, medical, and allied health professions. Special emphasis shall be placed upon dissemination of information regarding diet, hypertension, cigarette smoking, weight control, and other factors in the prevention of arteriosclerosis and cardiovascular disease.

"AUTHORIZATION OF APPROPRIATIONS"

"SEC. 418. There are authorized to be appropriated for the purposes of section 415, 416, and 417 \$50,000,000 for the fiscal year ending June 30, 1973; \$75,000,000 for the fiscal year ending June 30, 1974; \$100,000,000 for the fiscal year ending June 30, 1975; \$100,000,000 for the fiscal year ending June 30, 1976; and \$100,000,000 for fiscal year ending June 30, 1977."

Leading causes of death (United States 1968)

Diseases of heart and blood vessels	
Cancer	1,048,313
Accidents	318,547
Pneumonia and influenza	114,864
Diabetes	73,492
All other causes	38,352
	336,514

Percent of all deaths due to cardiovascular diseases by age

	Percent
All ages	54
Under 5	8
5-14	8
15-24	6
25-34	14
35-44	30
45-54	42
55-64	51
65-74	59
75 and over	70

Estimated prevalence of the major cardiovascular diseases

Stroke	1,600,000
Rheumatic heart disease	1,650,000
Coronary heart disease	3,750,000
Hypertensive disease	21,490,000
Total CVD	27,000,000

Estimated economic costs of cardiovascular diseases by type of expenditure

	[In billions]
Physician and nursing services	\$2.0
Hospital and nursing home services	6.4
Cost of medications	.6
Research and construction	1.4
Lost wages	6.9
Total cost	17.3

Estimated prevalence of cardiovascular diseases * in each State—1969

	Prevalence
Alabama	472,000
Alaska	14,000

Arizona	154,000
Arkansas	273,000
California	2,096,000
Colorado	191,000
Connecticut	366,000
Delaware	76,000
Washington, D.C.	161,000
Florida	862,000
Georgia	616,000
Hawaii	65,000
Idaho	68,000
Illinois	1,847,000
Indiana	648,000
Iowa	347,000
Kansas	257,000
Kentucky	459,000
Louisiana	536,000
Maine	150,000
Maryland	522,000
Massachusetts	810,000
Michigan	1,086,000
Minnesota	400,000
Mississippi	316,000
Missouri	660,000
Montana	73,000
Nebraska	165,000
Nevada	42,000
New Hampshire	92,000
New Jersey	1,095,000
New Mexico	74,000
New York	2,956,000
North Carolina	704,000
North Dakota	62,000
Ohio	1,429,000
Oklahoma	303,000
Oregon	235,000
Pennsylvania	1,958,000
Rhode Island	142,000
South Carolina	404,000
South Dakota	73,000
Tennessee	515,000
Texas	1,178,000
Utah	83,000
Vermont	55,000
Virginia	607,000
Washington	368,000
West Virginia	274,000
Wisconsin	507,000
Wyoming	33,000

* Includes coronary, hypertensive, rheumatic, congenital, syphilitic and other forms of heart disease, stroke and hypertension without heart disease.

Source: American Heart Association.

ESTIMATED MORTALITY FROM CARDIOVASCULAR DISEASES AND ALL CAUSES IN EACH STATE—1972

	CVD deaths	Total deaths all causes	Percent deaths due to CVD
Alabama	18,200	35,200	52
Alaska	400	1,400	29
Arizona	7,000	15,700	45
Arkansas	12,500	22,500	56
California	89,600	174,800	51
Colorado	9,700	19,000	51
Connecticut	15,300	28,200	54
Delaware	2,700	5,200	52
Washington, D.C.	3,800	8,700	44
Florida	42,200	80,100	53
Georgia	23,500	44,600	53
Hawaii	2,000	4,500	44
Idaho	3,200	6,300	51
Illinois	67,600	117,800	57
Indiana	28,900	51,700	56
Iowa	17,600	30,700	57
Kansas	13,000	23,400	56
Kentucky	19,400	34,500	56
Louisiana	19,200	36,500	53
Maine	6,500	11,400	57
Maryland	17,400	34,900	50
Massachusetts	33,400	60,600	55
Michigan	43,000	82,100	52
Minnesota	19,500	35,200	55
Mississippi	12,800	25,000	51
Missouri	29,400	54,300	54
Montana	3,300	6,700	49
Nebraska	8,700	15,500	56
Nevada	1,700	4,000	42
New Hampshire	4,400	7,800	56
New Jersey	40,800	73,100	56
New Mexico	3,100	7,600	41
New York State	108,600	209,800	52
North Carolina	25,100	47,800	53
North Dakota	3,100	5,800	53

ESTIMATED MORTALITY FROM CARDIOVASCULAR DISEASES
AND ALL CAUSES IN EACH STATE—1972—Continued

	CVD deaths	Total deaths all causes	Percent deaths due to CVD
Ohio.....	60,300	107,500	56
Oklahoma.....	15,000	27,300	55
Oregon.....	11,100	20,500	54
Pennsylvania.....	76,200	136,400	56
Rhode Island.....	5,700	10,100	56
South Carolina.....	13,400	25,000	54
South Dakota.....	3,700	6,700	55
Tennessee.....	22,300	39,500	56
Texas.....	50,800	101,100	50
Utah.....	3,500	7,300	48
Vermont.....	2,500	4,700	53
Virginia.....	22,300	42,500	52
Washington.....	17,500	32,500	54
West Virginia.....	11,300	20,600	55
Wisconsin.....	24,400	43,000	57
Wyoming.....	1,600	3,200	50
Total United States...	1,098,300	2,041,200	54

Puerto Rico: CVD deaths 6,800; total deaths 17,100; deaths due to CVD—40 percent. (In addition to U.S. totals.)

¹ Includes Los Angeles.

² Includes Chicago.

³ Includes New York City.

Source: American Heart Association.

By Mr. FANNIN:

S. 3204. A bill to amend title IV of the Social Security Act to permit greater flexibility in State plans for aid and services to needy families with children. Referred to the Committee on Finance.

CORRECTING WELFARE REGULATIONS

Mr. FANNIN. Mr. President, today I am introducing a bill to require four simple but very important changes in Federal welfare regulations.

These changes are necessary because the Department of Health, Education, and Welfare has not complied with the intent of Congress in drawing up regulations. States must follow to qualify for Federal funding for welfare.

The HEW regulations are so unrealistic and unreasonable that they should be corrected immediately. This matter cannot wait for the thorough overhaul of the welfare system which is now being undertaken in Congress.

The regulations I am concerned about are having dire consequences for Arizona and other States. These consequences are:

States are being forced to continue paying welfare to persons who have moved to other States, persons who may be on welfare rolls in other States or be holding down well-paying jobs in other States.

States are being forced to make excessive payments to welfare recipients because of an unwise disregard formula.

Families are being encouraged to "farm out" their children in order to proliferate the welfare households.

Unneeded welfare councils are being fostered to weaken the control of legally constituted State and local governments.

ARIZONA'S DILEMMA

Mr. President, the State of Arizona challenged the HEW rules which result in the welfare abuses I have listed. Unfortunately, a Federal court recently upheld the power of HEW to formulate such regulations.

Unless Arizona bows to the unwise regulations, the State could lose some \$41 million a year in Federal welfare funds.

Mr. President, I would like to set forth briefly some background materials relating to the controversy.

The Social Security Act authorizes several grant-in-aid programs. Arizona, at its option, applied for Federal funds for its welfare programs in certain statutorily designated categories such as old-age assistance—OAA—aid to the blind—AB—aid to families with dependent children and child welfare services—AFDC and CWS—and aid to permanently and totally disabled—APTD. Arizona submitted plans for programs in these categories to the Secretary of Health, Education, and Welfare. The Secretary is required to scrutinize the plans against the requirements set forth in the titles of the Social Security Act and applicable regulations.

Accordingly, the Arizona State Department of Public Welfare submitted and obtained approval for State plans in several of these categories.

Under the Federal statutory scheme, existing plans such as Arizona's continue to be subject to the Secretary's scrutiny. He may discontinue payments upon a finding that any plan no longer conforms to the above requirements.

The present controversy involves the question of whether the State's plans for OAA, AFDC, AB, and APTD are now in compliance with the Social Security Act.

Arizona objected to HEW's interpretation of the Social Security Act and refused to follow the interpretation in four areas. Consequently, the State was informed that Federal funds would be withheld from the State beginning April 1, 1971, and continuing until the State succumbed to the Federal bureaucratic mandates.

Mr. President, Arizona believes it is in substantial compliance with the Social Security Act. Arizona further contends that regulations of HEW are outside the scope of the Social Security Act. This is a brazen attempt by HEW to exercise by Regulation the policymaking power granted by the Constitution to the legislature.

Mr. President, the bill I am introducing would clarify the Social Security Act in four areas to make it abundantly clear to HEW what Congress intended when this act and amendments were approved. This act would enable Arizona, and other States, to continue reasonable regulations such as the following:

First. Arizona terminates aid payments to recipients who are residents of the State after they have been absent from the State for 90 days.

Second. In disregarding earned income in the aid to families with dependent children program, Arizona disregards from the net income rather than from the gross.

Third. Arizona continues assistance for children living with relatives only where the welfare department or the relatives have legal custody.

Fourth. Arizona has not established an advisory council composed of recipients and representatives of the public to advise the State department of welfare.

TERMINATION OF WELFARE PAYMENTS

Mr. President, section 1 of this bill provides that the Arizona policy of ter-

minating welfare recipients who move out of the State for 90 days is in accordance with the Social Security Act. The objection to a durational residency requirement before welfare can be received is that it imposes hardship upon new poor residents in a State. No such hardship is imposed by cutting a recipient off when he has been continuously absent from the State for 3 months. Further, if a family returns to Arizona after an absence of more than 3 months, and if they meet the requirements, they are once more eligible for public assistance. Arizona simply seeks to be allowed to terminate welfare payments to individuals who no longer have any contact with the State.

What could be more reasonable? Why should the State of Arizona continue making welfare payments to person who may have changed their residence?

It seems obvious that the unrealistic HEW regulation encourages welfare cheating. Welfare recipients are given a perfect opportunity to collect benefits from several States at one time. The State loses supervision of its own welfare cases, and there is no way to check on the continuing entitlement to benefits.

THE DISREGARD FORMULA

Section 2 of the bill pertains to the computations of amount of earned income to be disregarded under AFDC programs.

Under present regulations of HEW, States are required, in determining need for AFDC, to disregard the first \$30 earned monthly by an adult plus one-third of additional earnings. Costs related to work—such as transportation costs—are also deducted from earnings in calculating the amount of the welfare benefit.

It should be noted that HEW regulations requiring that employment expenses be deducted from two-thirds of income less \$30 is contrary to the accepted method of deducting income earning expenses before disregarding any amount of income traditionally employed under the AFDC program. It is only commonsense that any amount of disregarded earned income should be figured on the basis of disposable income—arrived at after subtracting costs attributable to the generation of income—and that disregards should be applied only to that amount of income available for meeting living expenses. Clearly, the expenses reasonably attributable to the earning of any such income is incurred in earning the gross income rather than only that portion remaining after giving effect to disregards. The HEW's method of considering disregards of one-third of gross income plus \$30 before accounting for earning expense defies logic by figuring disregards on a greater amount than is actually available to meet current needs. This, in effect, overstates the expenses reasonably attributable to the earning of income.

Mr. President, the application of the disregard formula as required by HEW has some very serious implications. There have been cases in States using the HEW formula where persons earning more than \$20,000 continue to draw welfare.

In Arizona, there is a very real concern

that if the HEW formula is applied, it could open the door to welfare payments to people earning more than \$30,000 per year.

Take the case of a man who is independently employed, has a gross income of \$30,030 per year, and legitimate expenses of \$20,000 per year.

Under the HEW formula, the \$30 disregard would be subtracted from the \$30,030, leaving a total of \$30,000. One-third of this is \$10,000 leaving a total of \$20,000. Subtract the \$20,000 in expense money and the man has, for welfare purposes, zero income. He can receive up to 65 percent of his needs in welfare.

Let us look at that again:

Gross income	\$30,030
\$30 disregard	-30
Subtotal	30,000
1/3 disregard	-10,000
Subtotal	20,000
Expenses	-20,000
Total	0

I suppose that this regulation, if widely used, could be the salvation of many a struggling small businessman. It is my understanding, however, that this is not the purpose of welfare.

The bill provides that the total of earned income, as provided by State law, should be reduced by the amount of expense reasonably attributable to such earned income.

FARMING OUT CHILDREN

Mr. President, the State of Arizona has a legitimate interest in protecting needy and dependent children from being farmed out of their own homes to live with relatives solely for the purposes of circumventing the State's welfare grant limitation.

In strict conformity with the Federal aid to families with dependent children program objectives "to help maintain and strengthen family life," the State has passed a regulation to help prevent parents' splitting up their families with the aim of increasing the aggregate grant size to a level above permissible limits. This is especially true since any child who is a member of a family where a parent is receiving public assistance is classified as needy and dependent.

Since children may reside with their parents and have their needs satisfied by the grant to that family, no need for farming out exists. Placing a child with a relative creates a new grant in that home which provides for fixed household expenses such as rent and utilities plus personal living expenses of the child.

In the home of his parents the household grant is figured on the basis of fixed household expenses plus an additional incremental amount for each child. Therefore, each child residing outside his parents' home generates a new grant in which fixed household expenses are provided for.

Arizona's regulation seeks to discourage this practice but does not prevent it. All the State requires is that the child have someone in the home or in contact with the home legally responsible for protecting his best interests.

If relatives want other children to live

with them, they could reasonably be expected to provide and care for them—not merely take them on just to create a new unit of welfare recipients.

Arizona does not oppose the cultural propensity of Mexican-Americans and Indians of allowing children to reside with relatives, but this practice must be subordinated to the policies of providing assistance to as many needy families as possible and assuring that children are in homes capable of protecting their interests.

Arizona's rule is also necessary for the child's protection, so that in case of medical emergency one capable of consenting to treatment, whether the welfare department or a relative, will be available. The custody requirement also cures problems that arise when a child needs permission to marry, authorization to participate in school activities, or permission to obtain a license—such as a driver's license.

It is simply commonsense that the person with whom the child is living, especially if he seeks public assistance for such a child's support, should be legally responsible for his well-being.

Section 3 of this bill makes it clear that HEW cannot disapprove a State plan because such plan provides for the denial of aid to a dependent child who is living with a relative other than the child's parent and whose parent is living with and receiving aid under the plan for a brother or sister of such child.

WELFARE ADVISORY COMMITTEES

Mr. President, the last section of this bill nullifies a HEW regulation that was found by the Senate Finance Committee to have absolutely no statutory basis. This regulation requires States to establish a welfare advisory committee for AFDC and child welfare programs at the State level and at local levels where the programs are locally administered with cost of the advisory committees and their staffs borne by the States as part of the cost of administering the welfare programs.

This requirement of a statewide advisory council for the AFDC and CWS programs is a clear demonstration of the attitude that the Social Security Act has empowered HEW not only to approve State assistance plans, but also to dictate detailed procedures and standards even in absence of authorization in the Social Security Act. Requiring the State to create a statewide advisory council composed of one-third welfare recipients or their representatives and invest it with policymaking authority makes a sham of the State's power to create its own offices in derogation of the 10th amendment and violates the spirit of cooperative federalism upon which the entire welfare program is grounded. HEW's position is that the State has no discretion in administering its own welfare program other than acceding to Federal wishes.

The Secretary can only promulgate regulations which are responsive to some section of the Social Security Act, consistent with it and necessary to the efficient administration of its functions. I submit that this provision is not responsive to any section of the act.

Section 4 of the bill amends the Social Security Act to prevent HEW from prescribing any rule or regulation requiring any State to establish or pay the expenses of any advisory council to advise the State with respect to their welfare programs.

Mr. President, this bill is intended to correct the gross misapplication of welfare. We must stop the bureaucratic proliferation of the welfare program. We must restore public confidence in our Government. These four serious flaws in the current system should be rectified quickly and these guidelines should be included in any future welfare reforms we may approve.

By Mr. ALLEN (for himself and Mr. ERVIN):

S.J. Res. 207. A joint resolution proposing an amendment to the Constitution of the United States relating to open admissions to public schools. Referred to the Committee on the Judiciary.

Mr. ALLEN. Mr. President, on behalf of myself and the distinguished Senator from North Carolina (Mr. ERVIN), I send to the desk a joint resolution and ask that it be appropriately referred.

The PRESIDING OFFICER (Mr. BYRD of West Virginia). The joint resolution will be received and appropriately referred.

Mr. ALLEN. Mr. President, the problems reflected in the current busing controversy stem from orders of U.S. district court judges. On the one hand, the U.S. Supreme Court has said that racial balance in public schools is not required by the Constitution. On the other hand, Congress has specifically excluded racial balance in its definition of "desegregation." Yet, U.S. district court judges continue to issue orders requiring racial balance as an end and massive forced busing as a means of achieving that end. Oddly the U.S. Supreme Court has approved of both the end and the means as established by U.S. district court judges.

If the above situation suggests a contradiction, it is because there is a contradiction in the reasoning employed by the Supreme Court.

The U.S. Supreme Court while recognizing that neither the Court nor Congress requires racial balance has said that judges of U.S. district courts when sitting as courts of equity are empowered in the exercise of broad discretionary power of such courts to order racial balance in public schools and massive forced busing to achieve racial balance. There are grotesque distortions of traditional principles of equity in this procedure—but that point can wait.

At the moment, when the President and Congress are considering possible remedies we must not lose sight of the fact that the basic cause of the problem lies in presumed equity powers of Federal courts.

It is possible that Congress can deny U.S. district court judges the power to enter decrees in school cases which require transportation of schoolchildren for any reason whatsoever. Congress has exercised such a power over U.S. district courts on many occasions. But there re-

main questions about legislative redress along these lines.

For these reasons, I favor legislative action to once and for all take Congress and the executive branches of Federal Government out of the business of compelling, encouraging, or funding forced busing schemes. However, this may not be adequate to get Federal judges out of the mess. A properly worded constitutional amendment may be the best method of accomplishing this objective.

Mr. President, the U.S. Supreme Court has given its blessings to a racial balance plan, such as described by a recent New York Times editorial, if implemented by State or local governments. It has also blessed racial balance plans such as are criticized by a recent editorial from the Dothan Eagle, Dothan, Ala. It is ironic that opposition is expressed from such diverse sources. This situation provides a strong argument for a constitutional amendment.

I request unanimous consent that these editorials and the text of the joint resolution be printed in the CONGRESSIONAL RECORD at the end of my remarks.

There being no objection, the editorials and joint resolution were ordered to be printed in the RECORD, as follows:

[From the Dothan Eagle, Feb. 9, 1972]

SEMANTICS IN BUSING

The Civil Rights Act of 1964 says:

"Desegregation means the assignment of students to public schools and within such schools without regard to their race, color, religion, or national origin, but desegregation shall not mean the assignment of students to public schools in order to overcome racial imbalance."

Section 407 of the act states further: "... nothing herein shall empower any official or court of the United States to issue any order seeking to achieve a racial balance in any school by requiring the transportation of pupils or students from one school to another or one school district to another in order to achieve racial balance ..."

Yet, Federal judges singly and in panels continue to issue orders that directly and flagrantly ignore this very same act. And previous orders are being enforced. The Judges do not explain how they act thusly. Nor why. Perhaps there isn't an explanation, unless it's hair splitting.

The situation has reached such a confused state—aided and abetted by the inherent fear of Federal Judges—that a movement is well under way in the House to get around the judiciary by an amendment to the Constitution. Scores of such amendments have been proposed and an informal steering committee has decided to push one offered by Rep. Norman Lent (R-NY) choosing his mainly because he's not a Southerner. Says his amendment, reminiscent of the 1964 Civil Rights Act: "No public school student shall, because of his race, creed, or color, be assigned to or required to attend a particular school."

The amendment is stuck in the House Judiciary Committee, headed by Rep. Emanuel Celler (D-NY), but 139 Representatives have signed a petition to force its discharge. At least 218 signatures are required to effect discharge. More than likely they will be forthcoming because (1) this is an election year; (2) busing has now become a national rather than a regional issue and Eastern, Northern, Mid-Western areas are about to feel the pinch. No longer is it something exclusive for the South.

It's a sad commentary on this country

that Congress has to resort to an amendment for the public to bail it out. And even if the amendment is ultimately adopted there's no assurance that the Supreme Court won't declare it unconstitutional.

[From the New York Times, Feb. 11, 1972]

DUBIOUS INTEGRATION PLAN ...

The Fleischmann Commission has properly given high priority to the racial integration of the state's public schools, and it has clearly described the disturbing trend of increasing segregation as the school population of the major cities turns predominantly black and Puerto Rican.

It is unfortunate, however, that the commission has proposed actions likely to create a maximum of conflict and in any case are quite unrealistic.

The key to the proposed approach is to create in every school a strict ethnic balance that approximates the racial pattern of total pupil population. In New York City, where the white enrollment now constitutes less than 40 per cent, this would mean that a white minority of roughly that proportion would have to be maintained in every school. Such a redistribution could be accomplished only by either transporting large numbers of white children into the presently predominantly black schools or by phasing out all schools in such areas. Both approaches would run into massive opposition on the part of black as well as white parents.

Equally questionable is the commission's proposal to bring about an ethnic balance among each system's teachers and administrators to reflect the racial profile of the total population. We have long urged effective measures to train and recruit greater numbers of educators among the minorities, along with the elimination of licensing procedures which result in racial discrimination. But to impose a relatively rigid ethnic balance is to mandate a quota system with its inherently discriminatory and divisive consequences.

Although the report thus seems flawed in important respects, it nevertheless contains many worthwhile recommendations, such as the avoidance of rigid ability-grouping within schools and stress on integrated facilities and an integrated curriculum, all of which are indispensable in the battle against racial isolation. Especially pertinent is the commission's insistence on adequate Federal and state financing of desegregation efforts, at a time when Congress, in a senseless backlash maneuver, is trying to prohibit the expenditure of such funds for busing. Even worse, Albany has already wiped out its own meager integration funding.

Perhaps the commission's most appealing suggestion is the construction of special regional schools on the cities' outskirts to give black and white parents a genuine opportunity to send their children to schools which combine educational innovation with full integration.

S.J. RES 207

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, to be valid only if ratified by the legislatures of three-fourths of the several States within seven years after the date of final passage of this joint resolution:

"ARTICLE —

SECTION 1. No public school student shall be assigned to or required to attend or forbidden to attend a particular school because of his race, creed, color or economic class.

"SEC. 2. Congress shall have the power to enforce this article by appropriate legislation."

ADDITIONAL COSPONSOR OF A BILL

S. 2938

At the request of Mr. DOLE, the Senator from North Dakota (Mr. BURDICK) was added as a cosponsor of S. 2938, a bill to amend the Rail Passenger Service Act of 1970.

EQUAL EMPLOYMENT OPPORTUNITIES ENFORCEMENT ACT OF 1971—AMENDMENTS

AMENDMENTS NOS. 907 AND 908

(Ordered to be printed and to lie on the table.)

Mr. ERVIN (for himself and Mr. ALLEN) submitted two amendments intended to be proposed by them jointly to the bill (S. 2515) to further promote equal employment opportunities for American workers.

NOTICE OF HEARING OF SUBCOMMITTEE ON MINERALS, MATERIALS, AND FUELS

Mr. MOSS. Mr. President, for the information of the Senate and as previously announced, the Subcommittee on Minerals, Materials, and Fuels of the Senate Interior and Insular Affairs Committee will hold a final day of hearing on surface mining legislation and in particular S. 2777 and S. 3000 at 9:30 a.m., February 24, 1972 in room 3110 New Senate Office Building. The witnesses will include Mr. Donald W. Whitehead, Appalachian Regional Commission; Dr. Elbert F. Osborn, Bureau of Mines and Mr. Bruce Hagen, North Dakota Public Service Commission.

NOTICE OF HEARING ON SALE OF CERTAIN PASSENGER VESSELS

Mr. MANSFIELD. Mr. President, Chairman WARREN G. MAGNUSON, Democrat of Washington, of the Senate Committee on Commerce today announced that the Merchant Marine Subcommittee will hold a hearing on Monday, February 28, 1972, to consider H.R. 11589, a bill to authorize the foreign sale of certain passenger vessels.

Senator RUSSELL B. LONG, Democrat of Louisiana, chairman of the Merchant Marine Subcommittee, will preside at the hearing. The hearing is intended to supplement hearings on the subject held on October 19, 1971, and is not intended to repeat testimony received at that time.

The hearing will commence at 2 p.m. in room 5110, New Senate Office Building.

For further information, contact Emanuel Rouvelas, staff counsel at (202) 225-9325.

ADDITIONAL STATEMENTS

ARTHUR GODFREY, A GREAT AMERICAN CITIZEN, RETIRES

Mr. PROXMIRE. Mr. President, one of the truly remarkable citizens of this country is Arthur Godfrey. In my book he is truly a great one.

We all know that he has been a fantastic success in show business, that he has actually earned millions of dollars, and that he brought a direct, personality you-to-me approach that revolutionized radio and TV communications.

But Arthur Godfrey is much more than that. He loves this good earth of ours with a passion. He is a foe, and a tough one, of any attempt to pollute it.

I will never forget his appearance before the Senate Appropriations Committee last year in opposition to the supersonic transport.

He is a man who understands the joy as well as the economics of flying. He is a real, all-out, wild-blue-yonder flyboy, who has spent endless hours in his plane, flying all over this planet.

He thoroughly understands the vital importance of technology for a more efficient, safer, and, yes, even speedier aviation industry. But he also has some very strong convictions that technology should be our tool, not our master, and that technological advance that renders this life of ours less healthy, noisier, or degraded in any other way is just not good enough.

Mr. President, last year I had the rare good fortune to take my 9-year-old son out to the Godfrey farm near Leesburg. Among his many other achievements, Mr. Godfrey has developed one of the most astonishing game preserves I have ever seen.

Much of his farm is devoted to hundreds of acres where a variety of wildlife from every continent can live—"Born Free." Arthur may observe, but he gives this preserve to his wildlife. It is theirs to live out their full-allotted span, and woe be to any bully with a rifle who goes out to kill these rare and lucky animals.

Mr. President, like all of us I have known many rich and successful men in my life, but I know of no one who has gotten so much and given so much and had such a truly great time in doing it as has this really marvelous American institution.

To Arthur Godfrey, his charming and gracious wife, Mary, and his attractive and devoted family I say: Happy retirement.

He will retire on April 30, when his last regular radio show will be broadcast. In all our turmoil and trouble over the past 30 years, Arthur Godfrey has made this a better, more honest America. I hope he will continue to do so for many years to come.

I ask unanimous consent that an article entitled, "Arthur Godfrey: Talk for That One Person," written by Michael Kernan, and published in yesterday's Washington Post be printed in the RECORD.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

ARTHUR GODFREY: TALK FOR "THAT ONE PERSON"

(By Michael Kernan)

In a nationwide photo recognition poll taken just before the 1960 election, John Kennedy scored 71 per cent, Richard Nixon scored 86 per cent and Arthur Godfrey scored 91 per cent.

When Godfrey first joined CBS in 1934 he was offered \$75 a week. Before long he was

bringing into the network conservatively \$22 million a year, which made him CBS's greatest single asset and incidentally a multimillionaire.

On April 30 Godfrey will end the half-hour radio show he has been doing seven days a week for 27 years. There will be TV specials and ecological campaigns and doubtless many public appearances, but at 68 the flying squire of Leesburg, Va., is in effect resigning as a fixture of American life.

The Godfrey style, however, will remain with us. It is his contribution to our time. For a generation raised on the disembodied Jehovah-like radio sonorities of Churchill, Roosevelt and Edward R. Murrow, his perfectly ordinary language delivered over radio and television in a voice that has been described as "a south wind blowing over a swampful of dirty old bathtubs" was electrifying.

Godfrey has told many times the story of his basic discovery, how he was lying in a hospital following a disastrous highway collision and was more or less forced to listen to the radio for hours.

"They would all come on," he said, "as if they were speaking to the whole country. Guuud eevening ladies and gentlemen. What they didn't realize was that the audience is one person sitting in a room and if there's two, they're probably fighting. I saw that you have to talk to that one person."

One night in Washington the idea became a technique. Godfrey read a department store ad about "filmy, clingy, alluring silk underwear in devastating pink and black."

"When I got through I said, 'Man, is my face red,' and I tore it up. 'I'll never do that again,' I said. Next day the client called and before I could speak he said he was sorry about my embarrassment but he wanted to tell me about the 167 women who came into the store and asked for the underdrawers that made Godfrey's face red."

The stories are legion. Five days after he took his first radio job, at Washington's WMAL, he learned that the William Tell Overture had been put on his record schedule. He announced: "Some big shot upstairs thinks you ought to listen to the William Tell Overture at 6:30 a.m.," and broke the record over the mike, a memorable sound.

"Don't worry," he added, "the big shots won't ever know about this. They're still in the sack and I can prove it. Scoop Russell—(or Ken Berkeley; the story varies) listen to this, Scoop." And he made a Bronx cheer. "Russell is the vice president, and if he's awake and listening I won't be here tomorrow."

Later the station manager called him in. "I don't know what you're doing on that morning show," he said, "and I'm not about to get up that early to find out, but whatever it is, keep it up . . ."

When Godfrey abruptly quit WMAL one bitter dawn, the station had to play "Beautiful Dreamer" for two hours.

The night Godfrey hit the bigtime: His CBS station, WTOP, wanted to do a 24-hour radio marathon and because there would be no engineer on duty all night and he was "The only one who knew how to run the dials," he was picked. He went out to the broadcasting tower in the swamps where National Airport is now, set the phone in front of him and started talking.

By 3 a.m. all the other stations were off the air, and he was getting calls from all 48 states, Canada, Puerto Rico and Bermuda. Word got around fast: "Hey, this guy puts you on the air," and sometime before dawn Walter Winchell, then at the height of his fame, phoned in and insisted on singing a duet with a Ben Bernie record.

Next day Godfrey's exploit was in Winchell's column.

From an old master disc, a typical program, Dec. 24, 1946: He reads a poem, sings "White Christmas" (in the throwaway style that

later was to sell a million copies of a neglectable novelty called the Too Fat Polka), then reads an eggnog recipe. "What a mickey," he comments casually at the end, and laughs. Then: "You folks out in the hinterland, here's a new tune from a brand-new musical on Broadway. Called 'Finian's Rainbow.' The tune is 'Necessity.' Later he puts on some background music remarks, "How about a little tune from the orchestra, it being time to sell headache powders," and chuckles the world's most famous chuckle.

A week later: he tells an icepack joke, reads a hangover recipe, adds, "My, my, my. Serves six, it says, Serves 'em right, too." Then he complains about some ads and wishes aloud for something different, like "She's ugly, she's divorced, she uses Bab-o." He winds up with a resolution ("If you're harboring a special hate for someone, get rid of it, you'll feel better") and holiday safety talk.

"Now let's have a merry Christmas, huh? Take care of yourself." The adonoidal voice is not so much worldly as the classic drawl of the mythic West.

This month Godfrey's narrated Aaron Copland's "A Lincoln Portrait" and "An Air Force Panorama" at Constitution Hall to celebrate the 25th anniversary of the Air Force. As a fanatic flier since 1929 and a retired colonel in the Air Force reserve, he was just the man for the job.

Arriving in Washington from his ranch in his two-engine Beechcraft to rehearse with the Air Force band, his first words were: "Gee, those jets stink." The remark was not a surprise, even for a man with 15,000 hours of command experience in aircraft, because Godfrey's great concern today is the environment and what we are doing to it.

("You used to be able to find a town by looking for the smoke plumes," he said, "but now when you're up there it's all you see is smoke everywhere, and the smog. That's how I got into the pollution thing.")

He walked stiffly from the plane, using his cane. In 1931 a truck collision left him two smashed hips, and though he has had one repaired with plates and pins, he doesn't want to go through the pain of another operation now. "It hurts like hell when I walk and especially when I stand," he said. "When I'm in a play I try to get a role where I can sit down."

For a man who has been through as much pain as he has, notably a lung cancer operation in 1959, Godfrey seems to be in remarkably good shape. His hair is still defiantly and unanimously red. ("Genes," he remarked. "My mother died three years ago at 90, and she hadn't a gray hair till 80.")

He still gets up early for the radio show and sees no reason why he should quit after April. ("Oh, no, no, that's the prettiest part of the day, man. The only way you can handle the population explosion is to adjust your traveling to when the rest are in the sack.")

And like a lot of other former smokers—he quit after 35 years of cigarettes, six years before the cancer developed—he stays out of nightclubs because he is getting steadily less tolerant of tobacco smoke. It agitates his chronic bronchitis.

"It's a stupid habit," he observed. "Nobody knows it better than me. When I was in the hospital I stopped and then had just one to celebrate getting out. I felt awful, couldn't understand why. When they told me it must be the cigarette I said it couldn't be that—I got a \$1½-million contract with Chesterfield."

Many of Godfrey's anecdote-rich conversations drift into ecology. Asked about his family, he replied: "Three children, one by the first, two by the second, all happily married, thank God, and five beautiful grandchildren. I don't think anybody has a right to do more than replace himself, though, and if he's a s--- he shouldn't have any kids at all."

Population pressures, he added, are why the

younger generation is uptight. "The world population is doubling every 30 years, and even though ours is lower than most, we still get a new Los Angeles every four years. The young are wrong when they cop out. The drug route and all that, it's a mistake, I think. It's their future, their life, and they better get working on it now."

Even his scheduled specials for Chrysler and Bristol Myers contain a requirement that one or two ecological points be made for the casual viewer. ("You got to slip it into his hide.")

Asked why his manner on the Chrysler TV commercials is so conventional, with hardly a glimmer of the irrepressible ad-libber of radio, he said he is allowed to write his own ad copy but it is subjected to executive approval because of the high cost of television time. Frequently he spends an entire day filming a single line from all conceivable angles. But even if the TV crew is incapable of an artistic decision there is no compensation for the wasted time and film: "It's made an actor out of me. I have to say it the same way every time."

Waiting backstage at Constitution Hall for his appearance, he sipped bullion and the strong tea an Air Force aide had brought at his request. His breathing was slightly labored, and frequently he cleared his throat or sprayed with an atomizer. His infirmities appeared to irritate him more than anything else, and his language was much too jaunty for the invalid whom the media had written off in 1959, when the lung operation climaxed years of plunging ratings and public disaffection in the wake of his waspish dismissal of protegee Julius La Rosa and other staff members over the air.

Clearly, something had turned him around. "In '59 I had a 2 per cent chance." Godfrey ruminated. "The media wrote me off. I wrote myself off for a year. Then I got a chance to be copilot on the first 707 delivery to Air India. Everyone was giving me six months at the time, including myself."

It was on tiger hunt in India, in a province where nobody had seen a tiger for 25 years, that the urgency of preserving the earth's species came home to him. Something else happened, too.

"We went on to Tokyo and had us a ball, and I want to tell you that till you've had a bath in Tokyo you haven't had a bath. I proved to myself that I was a helluva lot younger than my years. I just say, don't wait till you're as old as I was before you take that bath."

The trip changed his outlook on life. He learned to appreciate the Oriental civilization and philosophy.

"The whole thing had a leveling, broadening influence on my life," he said. "There was only one thing in life in which I could have faith, I decided, and that was a belief in the goodness of man. But that doesn't mean you can bend over unless your rear is against the wall. You've got to know that and not let it embitter you against man."

By this time the Air Force people were wigwagging at him in mute desperation because he had to change and go onstage in 12 minutes. He didn't let anything hurry him. He got there, unruffled as ever.

ACADEMIC FREEDOM AT STANFORD UNIVERSITY

Mr. FANNIN. Mr. President, on January 5, 1972, a Stanford University faculty advisory board recommended the dismissal of an associate professor of English for conduct during demonstrations on the Stanford campus last winter. This advisory opinion was accepted and approved by the president of Stanford University, Richard W. Lyman. Shortly thereafter, the Stanford Board

of Trustees considered the recommendations and approved the dismissal.

The significance of this decision has important ramifications for a university as it involves questions concerning academic freedom. Some critics are contending that the decision violates academic freedom because they interpret it as an effort to remove a faculty member whose views were considered unpopular or inappropriate. This interpretation is patently incorrect. In fact, what the Stanford decision does is give real meaning to what we know as academic freedom. The faculty advisory board addressed itself to this point in its written opinion by clearly stating that—

The real issue in these hearings is Professor Franklin's behavior on the offenses charged, not his political views. Diversity of political views is a great asset to the University.

The charges here, however, are incitement to use unlawful coercion and violence and increasing the danger of injury to others as means to achieving Professor Franklin's goals; it is that behavior, not his political views and their expression, which we judge unacceptable.

Indeed, we note with approval that others holding and expounding extreme political views are today highly respected members of the Stanford faculty.

Our decision silences neither political dissent nor criticism of the university.

The only speech of behavior repressed by the board's findings is that which clearly urges and incites others to unlawful coercion or violence, or to acts likely to increase the risk of injury to other persons.

In addition, President Lyman summed up the decision of the advisory board in this way:

The decision of the Advisory Board rests on the conclusion that on specific occasions in particular circumstances his speech exceeded permissible bounds by "urging and inciting to the use of illegal coercion and violence, methods intolerable in a university devoted to the free exchange and exploration of ideas." My agreement with that conclusion is buttressed by the knowledge that the minority dissent is based on disagreement over the interpretation of fact and motive and over the appropriateness of penalty, not on a finding that the University's intention or action in bringing the case was directed against the right of a faculty member to believe and to espouse unpopular views.

And, finally, the New York Times argued that—

Although the professor's defenders have predictably charged that the 5-to-2 faculty recommendation is a violation of academic freedom, massive evidence shows that it is quite the opposite: a painful but necessary attempt to protect such freedom against coercion and disruption from within the academy.

Mr. President, I think Stanford University is to be commended for making this decision. By strengthening academic freedom, Stanford has signalled its own determination to protect its academic endeavors from those who would subvert its goals and ideals. And, it has also signalled a renewed commitment to preserving self-government in the university community.

If our universities are to survive, then they must have the capacity, as Stanford does, to serve notice that violence, riot, and demagoguery do not serve the values of free scholarship nor a free society.

Mr. President, because of the significance of this decision, I ask unanimous consent that the entire report of the faculty advisory board, the response of President Lyman, and the New York Times editorial be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

DECISION, ADVISORY BOARD, STANFORD UNIVERSITY, IN THE MATTER OF PROF. H. BRUCE FRANKLIN, JANUARY 5, 1972

DESCRIPTION OF PROCEDURES

Pursuant to the provisions of Paragraph 15 of the *Statement of Policy on Appointment and Tenure*, the Advisory Board has held hearings on the charges preferred against Associate Professor H. Bruce Franklin by President Richard W. Lyman of Stanford University. Professor Franklin requested this hearing before the Advisory Board, which is the elected body of seven faculty members charged with the review of professional appointment and promotions at Stanford University. Our decision as to findings of fact and recommendations based upon those findings follows. In this introduction, we will deal with several related matters: representation by legal counsel for the parties and for the Advisory Board submissions and motions made before the hearings; hearing procedures and Board rulings not a part of the transcript; the schedule for the hearings and subsequent motions; exhibits, transcripts, further attachment and an outline of our report.

A. Representation by legal counsel

As provided for in Paragraph 15a of the *Statement of Policy on Appointment and Tenure*, both parties were entitled to representation by legal counsel. The University Administration was represented by Messrs. William Norris, Raymond C. Fisher, and Charles Rosenberg of the firm of Tuttle and Taylor; Professor Franklin was represented by Messrs. Michael Kennedy, Joseph Rhine, and Dennis J. Roberts of the firm of Kennedy and Rhine; and later by Messrs. Joel Kline, Merle Rabine, Yale Braunstein, Peter Goldscheider, Mrs. Jane Franklin and Mrs. Enid Hunkeler. Professor Franklin also appeared *in propria persona*. Professor Jan Vetter of the University of California School of Law served as counsel to the Advisory Board.

B. Prehearing procedures

The formal statement of charges against Professor Franklin was filed by the President, with attached exhibits, on March 22, 1971, following Professor Franklin's request on March 12th that an Advisory Board hearing on the charges be held. During the month of April and May, the Board communicated with the parties regarding the scheduling of hearings; a record of correspondence relating to these matters has been attached as a part of the pre-hearing record. On May 5, 1971, Professor Franklin made the request, opposed by the University Administration, that the hearing be postponed until the beginning of Autumn Quarter, 1971. After receiving the views of the parties the Board held a pre-hearing meeting on May 25, 1971, to settle upon a hearing schedule. The Board subsequently announced its decision that the hearings would begin on September 28, 1971, and set a schedule for pre-hearing motions, responses, and replies. The documents received by the Board are listed below; all were distributed to both parties at the time they were received.

March 2, 1971, Formal Statement of Charges Against Professor H. Bruce Franklin
May 31, 1971, Advisory Board to President Lyman and Professor Franklin regarding postponement

June 8, 1971, Professor Franklin's Reply to Charges

June 28, 1971, University's Interrogatories to Professor Franklin

June 28, 1971, Professor Franklin's Motion for Bill of Particulars

June 28, 1971, Memorandum of Points and Authorities in Support of Motion for Bill of Particulars

July 9, 1971, University Response to Motion for Bill of Particulars

July 9, 1971, Professor Franklin's Reply to University Interrogatories

July 20, 1971, Professor Franklin's Response to Stanford University's Response to Motion for Bill of Particulars

August 2, 1971, Advisory Board's Statement on the Ruling on Requests for Disclosure

August 1, 1971, Motions of Professor Franklin filed before the Advisory Board

August 16, 1971, Professor Franklin's Response to University's Interrogatories

August 17, 1971, University's Answers to Interrogatories

August 20, 1971, University's Response to Professor Franklin's Motions

September 3, 1971, Professor Franklin's Reply to University's Response to Motions

September 8, 1971, Advisory Board's Rulings on Professor Franklin's Motion

September 8, 1971, Professor Franklin's Supplemental Brief in reply to the University's Response to Motions

September 10, 1971, University's Supplemental Response to Professor Franklin's Motions

September 22, 1971, Advisory Board Memorandum on Procedures

September 25, 1971, University's Hearing Brief

December 17, 1971, Professor Franklin's Final Supplementary Written Brief

December 17, 1971, University's Final Supplementary Written Brief

C. Schedule

The length of the hearings, their original postponement to the fall, and other factors have unavoidably delayed the submission of this report until the present time. The *Statement of Policy on Appointment and Tenure* allows for the submission of supplementary written briefs in addition to final oral argument, and the Board gave the parties an opportunity to make such submissions. We requested that those briefs be in the Board's hands one week after receipt of the final volume of the transcript, but delays in the production of that record meant that the written briefs were not received until December 17, 1971.

D. Requests for intervention

The Board received two requests for intervention in the proceedings. The first of these, directed to the Advisory Board on April 30, 1971, was from a group of faculty members who wished to intervene through direct oral participation in the hearings. We invited this group to be represented at the hearings, and to submit written briefs stating their views of the matter. They have submitted a final written brief. A request for appearance *amicus curiae* was also received, two days before the end of the hearings, from the American Civil Liberties Union of Northern California. Their participation by written brief was also invited, and we received such a brief. These two briefs are also attached, along with a response to the ACLU brief from two members of the Stanford Law School faculty and several other formal communications to the Board and to the parties made by interested groups of faculty members.

E. Hearing procedures

The Board emphasized from the outset that this was an administrative proceeding, heard by an elected body of Professor Franklin's professional colleagues at his request, and that therefore it would not be appropriate to follow narrowly any explicit external model. We were not bound by the *Statement of Policy on Appointment and Tenure* to adhere rigorously to legal rules of evidence, and we did not. We did, however, require that evidence be relevant to the charges as

drawn. We also adopted as a standard of proof that "strongly persuasive" evidence of culpability be provided. Professor Franklin's *Answer to Charges* introduced alternative defense based upon necessity and upon the Nuremberg principles. Since these were not argued in the hearings, our findings do not deal with them. Further details on procedures and standards are given in the Advisory Board's Response to Motions, and in its memorandum on procedures dated September 22, 1971.

As requested by Professor Franklin, the hearing was open; it was held in Room 101 of the Physics Lecture Hall on the Stanford campus. Except for two occasions on which the hearings were disrupted for brief periods of time, the hearing atmosphere was an orderly one, and we do not believe that the procedures adopted or the conditions of the hearings presented undue disadvantages for either party. For most of the hearings, closed-circuit television and radio coverage was provided, as requested in Professor Franklin's *Motions*.

As required by the *Statement of Policy on Appointment and Tenure*, a stenographic transcript of the hearing was made, and is supplied along with this report. The hearing commenced on September 28, 1971, at 1 p.m., and concluded on November 5, 1971, at 5 p.m. In the thirty-three days of hearings, the Advisory Board met for a total of 160 hours and heard testimony from 111 witnesses representing the University Administration and Professor Franklin. The resulting transcript contains about one million words.

F. Outline of report

This report consists of three sections. In the first, we consider major background issues raised by the parties in pre-hearing documents and during the course of the hearings themselves. In this section, we deal with the standards that govern faculty conduct, and with arguments concerning the applicability of various constitutional protections to the discipline of a faculty member. In the second section, we review the evidence concerning each of the four charges, and present findings of fact on the separate charges. In the third section, we discuss the question of penalty, and set out recommendations. A summary of the findings and recommendation is given at the end.

FUNDAMENTAL ISSUES AND STANDARDS

Much attention has been paid by the parties to "Constitutional" questions that may apply to the matter before us. We here respond to that concern by treating some of the major issues of this kind that have been raised in argument and briefs by the parties.

"State action"

Constitutional standards of due process and free speech restrain the state. At one point in this proceeding the University administration expressed the view that disciplinary proceedings at a private institution are not necessarily subject to Constitutional protections, while Professor Franklin has responded that Stanford is in substantial part publicly financed and publicly regulated and that the Constitution is consequently as fully applicable to Stanford as to an agency of the state. The merits of these two competing views aside, the Board does not believe that the disagreement between them focusses upon the important issues.

Tenure proceedings at all universities, private and public, involve an attempt to abrogate permanence of employment for cause.

Tenure, accurately and unequivocally defined, lays no claim whatever to a guarantee of lifetime employment. Rather, tenure provides only that no person continuously retained as a full-time faculty member beyond a specified lengthy period of probationary service may thereafter be dismissed with-

out adequate cause. Moreover, the particular standards of "adequate cause" to which the tenured faculty is accountable are themselves wholly within the prerogative of each university to determine through its own published rules, save only that those rules not be applied in a manner which violates the academic freedom or the ordinary personal civil liberties of the individual. An institution may provide for dismissal for "adequate cause" arising from failure to meet specified norm of performance or productivity, as well as from specified acts of affirmative misconduct. . . .

. . . This accompanying complement of academic due process merely establishes that a fairly rigorous procedure will be observed whenever formal complaint is made that dismissal is justified on some stated ground of professional irresponsibility, to insure the fair determination of three facts:

1. that the stated cause is the authentic cause for dismissal, rather than a pretense or makeweight for considerations invading the academic freedom or ordinary personal civil liberties of the individual;
2. that the stated cause exists in fact;
3. that the degree of demonstrated professional irresponsibility warrants outright termination of the individual's appointment rather than some lesser sanction, even after taking into account the balance of his entire service and the personal consequences of dismissal.

(Van Alstyne, N. Bulletin of the American Association of University Professors, Autumn, 1971)

Given the essentially identical character of the inquiry in tenure cases, neither the standards of due process nor the content of regulations covering speech need differ between private and public institutions of higher learning. It is open to a private university to impose Constitutional limitations on itself as a deliberate choice of policy; in advance of the hearing the Board committed itself to at least this much in undertaking to provide for Professor Franklin "no less protection of his Constitutional rights at Stanford than that to which he would be entitled as a member of the faculty of a state university." In the opinion of the Board the more significant questions are: What are the Constitutional boundaries? What should be the university's policies beyond the minimum standards set by the Constitution?

We emphasize at the outset that we do not regard the conduct described in the charges filed by the University administration to be constitutionally protected against University discipline. On the contrary, we consider such conduct to be clearly within the reach of institutional authority. The university charges that the two speeches involve advocacy that is directed to inciting or producing imminent lawless action, and likely to produce such action. The charge on the computation Center incident deals with conduct which might unjustifiably increase the risk of injury to others.

But this is not all that needs to be said about the matter. Professor Franklin has also characterized as "vague" and "overbroad" the charges made against him, and also the standards set out in the *Statement of Policy on Appointment and Tenure* ("substantial and manifest incompetence, substantial and manifest neglect of duty, or personal conduct substantially impairing the individual's performance of his appropriate function within the university community"). Prior to the hearing, the Board rejected Professor Franklin's challenge on the vagueness and overbreadth of the charges; at the same time, it reserved its decision regarding the similar claims directed to the underlying tenure regulations. The Board now rejects these claims as well, for reasons we discuss below.

Vagueness overbreadth: The State context
The term "overbreadth," as the parties agree, means that a regulation encompasses

both conduct which the institution can legitimately prohibit, and conduct which is Constitutionally protected against such prohibition, i.e., speech of the sort shielded from governmental restraints by the First Amendment. "Vagueness" is a different but related defect which leaves the meaning of the regulation uncertain, in such a way that a member of an institution cannot reasonably judge what conduct is prohibited and what conduct is permitted.

The simplest level at which an argument of overbreadth may be met is to ask whether the conduct for which an individual is allegedly culpable under some regulation is Constitutionally protected. If that were found to be the case, then obviously the Constitution would not allow the individual to be penalized under the regulation because, no matter how precisely and clearly its terms describe the conduct, the prohibition was illegitimate under Constitutional provisions. Professor Franklin maintains that the University's charges against him deal with actions that are Constitutionally protected. He goes further, however, to argue that even if the Constitution would allow his prosecution for that conduct in which he engaged, and even if that conduct were clearly covered by the University's tenure regulation, that regulation is inapplicable to him simply because of its overbreadth. This conclusion is argued from the principle that society places a high value on the free exercise of speech, and that it can tolerate no "chilling effect" on this freedom. If a regulation covers both permitted and prohibited conduct, then it may deter others from exercising First Amendment rights which fall under the improperly constructed portion of the regulation's roof. Even a person guilty of legitimately proscribable conduct may be rewarded for pointing out the Constitutional infirmity of the regulation under which he was prosecuted by relieving him of the consequences of his guilt. For the vice of overbreadth, the institution is forced to invalidate the regulation over its entire range of application, and to substitute for it a more narrowly drawn regulation which will withstand Constitutional scrutiny.

The vagueness doctrine, by contrast, is in substantial part a canon of ordinary fairness. If a jurisdiction has not identified a particular kind of conduct as subject to punishment, it should not then be able to punish perpetrators of such conduct. Vague regulations may share some of the disadvantages of overbroad regulations, because their indefiniteness may overlap Constitutionally-guaranteed zones of activity and deter people from doing what they have the right to do. Where indefinite regulations are applied to speech, the vagueness then invades an activity of such high social utility that it claims special protection in the Constitution. Again, it may be justifiable to reward persons who, while knowingly engaging in activity that the institution may legitimately proscribe, can show that the regulation is vague at the border between punishable and protected conduct. Like the transgressor who points out overbreadth, the identifier of vagueness—even though he might be guilty under a properly drawn regulation—might receive a benefit for helping to thaw improperly-frozen expression.

Vague regulations introduce other difficulties as well in a state context. The responsibility for drafting of governing regulations rests with legislators who are accountable through political processes; then they enact a vague statute, they shift responsibility for the law-making function onto the courts, who must take up the legislator's abandoned obligations and give the statute meaning in the course of applying it. Such a transfer of responsibility might unduly disturb the balance of powers among the branches of government. Furthermore, the law enforcement authorities as well as the

courts have received the responsibility transferred by the vague regulation, and may thereby be afforded unduly wide discretion in the selection of whom to prosecute. Obviously, such freedom might be exercised arbitrarily, or for the purpose of retaliating against Constitutionally protected activities. Finally, the adjudicating process itself is damaged by vague relations: both the parties and the decision maker are at a loss as to how to prepare the case, what evidence to introduce, what arguments to make, and what standards to use in deciding it.

Vagueness and overbreadth: The university context

These reflections on the briefs and arguments of the parties regarding the doctrines of vagueness and overbreadth spell out certain problems, but hardly take us directly to a resolution of the present issues. The legal material pressed on us by the parties deals with problems of vagueness and overbreadth in contexts which often depart substantially from that applying in this case. It is on this ground that we set aside the cases on student discipline that both parties have reviewed for us in some detail. Our examination of these cases persuades us that the law in this field is incompletely settled; a rapid rate of contemporary change has generated substantial disagreement and a conspicuously confused rationale. There may be a trend toward enhanced protection, and an employment of concepts of vagueness and overbreadth similar to those urged upon us by Professor Franklin. But we recognize important differences in the relationship between the institution and students, on the one hand, the faculty, on the other. Students are much more numerous; their time in the institution is shorter; their fiscal relationship with it is entirely different; and a different tradition of academic freedom obtains. These difficulties emphasize our conclusion that the problems of vagueness and overbreadth, as well as other aspects of the case, must be analyzed with due regard for the framework and the atmosphere—of the relation between a faculty member and the University.

We may dispense quickly with two of the difficulties engendered by vagueness. In some other procedural system, vague regulations may produce problems in the preparation, hearing and decision of the case, since none of the participants can find his way in the fog created by the lack of underlying standards. However, we consider the charges in this case reasonably narrow and specific. In our opinion, they are fully adequate to state an intelligible conception of the case on the part of the University administration, give Professor Franklin notice of the conduct with which he is charged and enable him to prepare and present his defense, and equip the Board to shape the hearing and focus on commonly understood issues. Beyond this, the Board afforded each party the opportunity to obtain pre-hearing disclosure from the other party of information and contentions relevant to the case.

We also do not believe that the role of vague statutes in unbalancing the separation of governmental processes is one that need concern us in this situation. The faculty of the university is a small community, characterized by face-to-face contact and personal interaction. Legislation proscribing conduct in a disciplinary context is rare; when it occurs, it merely codifies previously shared understandings. While there is clearly some allocation of function as between faculty and administration, with ultimate authority retained in the Board of Trustees as a matter of legal right, interchanges and combinations of roles are heavily involved in the actual governance of the university. Faculty members relate to the institution more through practice and informally negotiated consensus than through hierarchically codified rule. Rules of conduct thus trace their

source to slowly evolving tradition rather than to abrupt acts of legislative intervention by persons in positions of formal authority. Lack of centralization—often aided by small size and extensive interaction—obviate for the university faculty the need for the kind of detailed directions that guide the armies of bureaucrats upon which larger organizations often rely for administering centrally-determined policies.

There remain the problems of fair warning, of overbreadth, and of undue discretion in enforcement. Against the background of the relationship between citizen and state, it is easy to make these issues appear genuine and substantial. Plainly, it would be intolerable for the state to provide that a citizen could be imprisoned for "substantial and manifest incompetence, substantial and manifest neglect of duty, or personal conduct, substantially impairing the individual's performance of his appropriate functions within the community." The situation is different, we believe, when the public to which similar regulations are addressed is the faculty of the university. In the more restricted setting, the regulation invokes a web of largely unwritten rules as tough and living as the British Constitution. Powerful traditions, modified by contemporary practice, furnish a reliable guide to faculty conduct, and entrust review procedures to faculty peers—in this case, to a faculty hearing board elected by the faculty. Nothing in those traditions collides with Constitutionally guarded freedoms. On the contrary, it is the University's responsibility to enhance the exercise of rights of speech which the First Amendment merely protects against governmental interference.

We would emphasize the meager record of the academic community's experience with faculty discipline. This may well be because faculty members chose their profession in part because they embrace traditional faculty norms, therefore performing willingly what written rules coerce in other systems. Indeed, the kind of written rules contained in court decisions and codes are not merely responses to the need for prior warning. They are also the result of society's experience in enforcing pre-existing norms against a partly recalcitrant population—as suggested by the maxim that "ignorance of the law is no excuse." The general practice of conforming to norms may instruct individual faculty members about those norms just as clearly as would occasional cases of discipline for breach of standards. This wide observance of the norms of faculty conduct cannot disguise the fact of strong disagreement with them among some faculty; dissent from a rule, or even from the entire system of rules, obviously exists, and must exist to furnish the motive power for necessary change. But *disagreement with a rule is not the same as ignorance of its terms.*

It is perhaps true that a fully-developed code would be a more readily interpretable guide. But we believe that the institution and its members would pay a heavy price for such codification in terms of lost faculty autonomy and initiative, and in over-bureaucratization. This detriment should be carefully weighed before the university accepts regulations spelled out in greater detail. What we have called the web of unwritten rules of faculty conduct is not clear or easy to apply in all cases; on the contrary, there are borderline cases, and intractable problems of application. But codified systems of rules, too, are inevitably characterized by gaps and conflicts—and suffer from certain pathologies precisely because they are written. For example, rules designed to protect speech by limiting other speech are double-edged; in either direction they cut into regions that lie under the protection of the First Amendment.

On balance, we favor the present reliance on largely unwritten standards. But whatever the future holds in this regard, we find the

present understandings adequately clear to guide faculty members in choosing among various courses of action in particular situations.

Statement of policy on appointment and tenure

The duties of a faculty member include, obviously, specific teaching and scholarly obligations that are understood primarily in terms of arrangements reached voluntarily between the individual and his department or some other institutional unit. Such obligations are generally not spelled out in writing, perhaps because professors object to formal job descriptions. Nonetheless, failure to meet commitments of this kind would clearly constitute "substantial and manifest neglect of duty." Similarly, "performance of his appropriate function in the University" means the meeting of the full range of agreed-upon institutional obligations. Professor Franklin, in his final argument, characterizes the *Statement of Policy on Appointment and Tenure* as being worded so as to protect the performance of these positive obligations—to enable the institution to weed out the demonstrably incompetent. But the unwritten understandings discussed above give to the terms "duty" and "appropriate function" a character of limitation as well as of obligation. The fulfillment of a faculty member's duty to his students and colleagues is understood to involve an obligation to refrain from corrupting the intellectual transactions that are the essence of the university, and the other activities that support these. This does not, of course, mean that he must exhibit political conformity with the objectives of the institution; the university must accommodate the questioning of contemporary goals and structures, and must even tolerate the view that the university, or the professoriate, should not survive. There is positive benefit in having on the faculty active representatives of political views that, while they may be considered extreme or dissenting here, are held by large numbers of people in the world and comprise a dominant form of political organization in many places. It seems likely that students can get a better education about the nature of these ideas from proponents than they can obtain through an exposure only to disengaged analysts. Proponents are often also proselytizers: that freedom should be granted also so long as its exercise does not infringe upon the free choice of others. The code of the institution does, however, demand that the speech and conduct of a professor stay behind the line of inciting or physically causing the impairment of the institution's functions, especially its function as a forum in which various other points of view can also be heard.

Policy on campus disruptions

The *Policy on Campus Disruptions* (hereafter called the *Policy*) first appeared in 1965. It was a first attempt to provide more detailed codification of conduct that might be proscribed on the campus. The *Policy* was clearly never intended to list all behavior that a faculty member might engage in that was against university policy; indeed, its original authors (the no-longer-extant Committee on University Policy) did not even aim it explicitly at faculty, so that it later had to be ratified by the Academic Senate in 1968. That bit of legislative history is interesting: although there was some debate about a linked proposal concerning the judicial mechanism for dealing with faculty violators, no member of the Senate offered dissent to a single substantive element of the *Policy*. This episode shows, perhaps more clearly than anything else, that the *Policy* was widely and immediately accepted because it articulated some assumptions about appropriate conduct that most faculty members held in common.

Another way of illustrating this proposi-

tion is to suppose that there were no *Policy*. Would the University then be powerless to take action against a faculty member for any of the acts described therein? In other words, do we really insist on requiring that every proscribed action be named in a document before we place it on the other side of the line? The Board believes that the answer to each of these questions is "no." We have concluded above that there are common understandings of appropriate faculty conduct, and that conduct therefore exists which, even though it may not be listed in an official policy, is nevertheless sanctionable.

With this background, we can consider the specific conduct of the *Policy*. It lists several general positive obligations:

a. to maintain "an atmosphere conducive to scholarly pursuits"

b. "to preserve the dignity and seriousness of University ceremonies and public exercises"

c. "to respect the rights of individuals"

The *Policy* also includes several specific areas of proscribed conduct:

a. "to prevent or disrupt the effective carrying out of a University function or approved activity such as lectures, meetings, [and] public events. . ."

b. "to obstruct the legitimate movement of any person about the campus or in any University building or facility."

The Board believes that these provisions provide a clear statement amplifying and defining some of the concepts expressed more generally in the *Statement of Policy on Appointment and Tenure*. Its applicability to faculty members is beyond doubt.

Protected vs. punishable speech: The relation of the "Policy" to incitement

We now turn to the fact that the *Policy* does not specifically prohibit incitement. The failure to deal with such speech is not, in the Board's view, the result of a conscious decision to protect all speech. Rather, it is one aspect of the history of the *Policy*, which was formulated quickly to meet a momentary need for the articulation of certain basic, commonly-held views. The Board does not accept the argument that the *Policy's* omission of a discussion of incitement automatically removes it from prohibition.

In the Board's view, incitement to illegal conduct—as we shall define it below—is an abuse of power. Such abuse is a serious matter in a university, especially when faculty members are addressing students. We see no excuse for placing certain conduct beyond the law of the campus, as the *Policy* does, and then implying blanket permission for faculty members to incite others to engage in that same conduct.

Protected vs. punishable speech: Standards

We do, however, see every reason for taking care that the standard for incitement is carefully drawn, with due cognizance of those First Amendment protections that apply to the relation between state and citizen. A wide range of standards has been offered to us. At one extreme, we were urged by counsel for Professor Franklin that no speech should be punished by the university, regardless of its incitement to illegal acts. At the other, we might have ruled sanctionable the advocacy of vaguely-defined violent action proposed for some time in the indefinite future. In ruling on the White Plaza and Old Union speeches, we shall meet a standard suggested by the Supreme Court decision discussed at length by the parties in this case. The court in *Brandenburg vs. Ohio* (395 U.S. 444) held that to be punishable, advocacy must "be directed to inciting or producing imminent lawless action, and . . . likely to produce such action." A vague exhortation is not punishable under such a standard; on the other extreme it is clearly unreasonable to demand, as did counsel for Professor Franklin, that there be an exact correspond-

ence between specific acts advocated and those that follow. Subsequent illegal acts are not in fact required for incitement to be punishable under this standard. Such acts might, for example, have been prevented by external circumstances, or illegal acts might occur but differ from those advocated. Subsequent acts are useful in determining the level and character of risk that obtained at the time of the alleged incitement. In judging the applicability of the standard cited, the Board has been guided by the following considerations:

a. What is the entire context surrounding the alleged incitement, including the immediate risk of lawless action?

b. What is specifically being communicated to the audience?

c. What did the speaker intend? We judge intent on the basis of the speaker's own knowledge of the context for his speech, his awareness of the level of the risk, and the words he actually used.

In the application of this standard, punishable advocacy need not identify particular acts, but it must include advocacy of lawless conduct. Inclusion of advocacy of legal acts with advocacy of lawless conduct does not immunize that advocacy from punishment. In the application of this standard to the campus, it is clear that "lawless action" refers to acts against the law of the campus, that is, to conduct proscribed by the *Policy* or University regulations, or clearly prohibited under the kind of common understanding of conduct discussed above.

With respect to the Computation Center incident, the Board has applied a different standard. Professor Franklin is charged with intentionally inciting students and others to disregard and disobey a police order to disperse. If, knowing the risk, he increased the risk of personal injury to other persons, some of whom were unaware of the risk, then his conduct is punishable. Incitement need not be directed to increasing the likelihood of illegal conduct; it may also be punishable if it places persons at heightened physical risk, as with the cry of "fire" in a crowded theatre. Such speech is clearly not Constitutionally protected.

It may be argued that the university should allow more scope than the Constitution, or the current demands of society, would require; indeed, it has been put to us that the university should not undertake to restrain speech at all. We believe the university's prohibition of incitement, given the criteria of intent, risk and imminence discussed above, is fully justified when speech threatens two central university interests: (1) protection of members of the university community and university facilities against risks of serious injury or damage; (2) protection against coercive intrusion on the intellectual transactions which the university seeks to foster.

We observe also that in taking this position we have rejected a formulation urged upon us by a group of intervening faculty. In their view, dismissal from a tenured position is warranted only for "failure to perform the duties for which one was hired—teaching, and/or research . . ." or for previous conviction of "some criminal act." We believe it is inappropriate to tie tenure proceedings to the criminal process. The standard suggested by the interveners would, to be sure, relieve the Board of the difficult obligation to construct a narrative of disputed events as a basis for judgment. However desirable that might be, we find it almost the only virtue in their position. A criminal proceeding may require several years to resolve, and it may terminate favorably to the accused for reasons which have nothing to do with a faculty member's fitness to retain his position. It is not obvious why the university should be dependent on external prosecution policy, which may respond to a number of factors but which is unlikely to reflect any sensitive judgment of university interests as a central

concern. It does seem clear that sound decisions, on the issue of penalty perhaps even more than on the issue of culpability, under university standards, will require the kind of intimate familiarity with the facts of a case that can be best provided by professional peers. On this basis, the mere fact of conviction of criminal offenses could be a wholly insufficient guide to wise disposition within the university.

Relation of speech to the institution

Lastly, we turn to the circumstances under which speech occurs, and to the relationship between those circumstances and the "duty" and "appropriate function" of the speaker. Speech and conduct by faculty members have in other cases been treated according to different standards depending upon whether they were judged to be connected with the faculty member's duties or unrelated to them.

Professor Franklin has applied the term "extracurricular" to his speech at the two rallies. The Board cannot agree with this use of the term, if by it Professor Franklin intends to place the speeches in question outside the framework of his duties and appropriate function in the university. There is a degree of difference, to be sure, between speech in the classroom and speech outside it; it may reasonably be held, for example, that explicit advocacy of a political position unrelated to the subject matter of a course is improper when delivered in front of a class, but is not when delivered at a rally outside the classroom door. But that view does not automatically remove all activities that take place outside the classroom door from the reach of institutional regulation. In a residential university, faculty members relate professionally to students in many ways: in offices, at the dinner table, in informal advising situations, and so on. These relationships certainly do not resemble contacts between the faculty member and citizens on a downtown street. We believe that the speech of a faculty member to a campus audience on campus issues is subject to regulations, though the standard applied to it will be different from that applied to a classroom situation. Indeed, the location of the recommended target may equally serve to define speech in relation to the institution: a faculty member inciting an off-campus crowd to occupy a university building illegally is, in our view, liable to institutional regulation.

We will now consider the specific charges in the light of these standards.

FINDINGS OF FACT: THE LODGE INCIDENT

A. Charges

The relevant University charges concerning the Lodge incident are contained in Paragraphs 6 and 7 of the *Statement of Charges* dated March 22, 1971. These paragraphs read as follows:

6. On January 11, 1971, Drs. Campbell and Tompkins and Ambassador Lodge attempted to proceed with the scheduled program at Dinkelspiel Auditorium but were prevented from doing so by disruptive conduct by various people in the audience. The disruptive conduct include, among other things, loud shouting, chanting and clapping. Because of the disruptive conduct the audience was often unable to hear the words of the speakers, Ambassador Lodge was prevented from delivering his speech, and the scheduled program had to be cancelled.

7. Professor Franklin was in the audience and knowingly and intentionally participated in the disruptive conduct specified in paragraph 6, significantly contributing thereby to the disruption which prevented Ambassador Lodge from speaking and which forced the cancellation of the program. Ambassador Lodge and Drs. Campbell and Tompkins were thus denied their rightful opportunity to be heard, and members of the audience were

denied their rightful opportunity to hear and to assemble peacefully.

B. Response to paragraph 6

Paragraph 6 does not connect Professor Franklin with the events cited, and therefore his personal culpability is in no way demonstrated if the Board sustains the correctness of this paragraph. However the defense and the University Administration both introduced extensive evidence and argument dealing with the Lodge incident *per se*, and the Board is responding to this material.

(1) Description of the Incident

It is incontestable from the tape recording that "disruptive conduct," including "loud shouting, chanting and clapping" occurred during the Dinkelspiel program of January 11, 1971, and that at least part of the "audience was often unable to hear the words of the speaker." Dr. Campbell was able to complete his prepared speech with only occasional interruptions and catcalls. On one occasion he asked for quiet, on other occasions he acknowledged the noise of the audience with brief pauses, and at one point he commented on it specifically. Dr. Tompkins engaged in several exchanges with the audience, one specifically involving Professor Franklin; there was increased noise, including interplay among members of the audience, but Dr. Tompkins was able to complete his introduction of Ambassador Lodge. From the moment Mr. Lodge took the podium, however, the noise, clapping, and shouting increased; it was sufficiently sustained and intense to cause the cancellation of the meeting some five minutes later.

2. Principal Defenses

(a) *Cancellation of the Lodge speech was either unnecessary or premature.* Although there may have been a degree of ineptness in the way Drs. Campbell and Tompkins attempted to deal with the crowd, we would agree that Ambassador Lodge was prevented from delivering his speech, and that cancellation of the program was reasonable under the circumstances. We see no evidence that the management of the situation was directed toward entrapment of the demonstrators, as claimed by Professor Franklin and some other witnesses. Furthermore, although more skillful management and additional persistence might have kept the meeting going, we do not believe that an institution should be required to supply for such functions presiding officers who possess exceptional ability at crowd management.

(b) *The disruption was justified on grounds of necessity.* In his testimony and his argument, Professor Franklin expressed approval of the disruptive conduct of the protesters, and justified this view by claiming (i) that the program was a political rather than an academic function and that the meeting had not been properly authorized under University regulations governing speakers prominent in public life; (ii) that the program was unbalanced because of the exclusion of speakers from Communist countries; and (iii) that Ambassador Lodge is a "war criminal."

(i) The Board believes that, in line with a long practice of similar conferences and meetings on campus sponsored by the Hoover Institution, the intent was to hold an academic exercise rather than a political meeting. Formal approval under University regulations was secured in a routine manner.

(ii) Although we agree that no special efforts were made by the Hoover Institution to include a broad range of political points of view, the Board emphasizes that there is no requirement or expectation in academic life that any single meeting must represent the full extent of the political spectrum. There is clearly an opportunity for many divergent views to be heard on this campus; the entire range need not be present at each event.

(iii) Professor Franklin and many of his witnesses objected to the presence of Am-

bassador Lodge on the grounds that he is a "war criminal," and felt that shouting and heckling were the only ways to acquaint him with their opposition. There is no question that there were deep feelings of outrage within the Stanford community, which Professor Franklin testified that he shared. Not only was Mr. Lodge appearing under the apparent sponsorship of the University, but he had made it clear at a press conference earlier in the day that he would entertain no questions dealing with the Vietnam war. Although the topic of the meeting dealt with the 25th anniversary of the United Nations, some members of the academic community felt that by refusing to deal with such questions Lodge, as a public official, was refusing to make an accounting of his stewardship of office. The Board, however, is not willing to endorse the general principle that a lecturer—regardless of his official position—must accept his audience's selection of subject matter for the discussion period. We further note that whatever the depth of feeling of the protesters, disruption was not a "last resort" to influence the meeting. It was open to those with strong convictions to communicate ahead of time with the Committee on Public Exercises, the President's Office, or the Hoover Institution, for possible modification of the format at the meeting; it was also possible to devise means of non-disruptive protest. There is no evidence that an effort of either kind was made.

The Board acknowledges that reasonable men may believe that Ambassador Lodge could be tried for "war crimes" under the Nuremberg Principles. However, it is important to remember that Mr. Lodge has not been tried and found guilty of "war crimes"—though the Board noted a tendency on the part of many witnesses to assume the contrary without question. We emphasize that just as Professor Franklin must be presumed innocent until proven guilty, so too must Mr. Lodge.

Even if any or all of these arguments were supported by the facts, the Board feels that disruptions of a magnitude that force the cancellation of a speech on a university campus simply cannot be justified. To acquiesce to the indignation of any group in this matter would permit a tyranny of the few that could deprive the many of the chance to hear not only Mr. Lodge but other controversial speakers as well.

(c) *Shouting, heckling and other disruptive audience conduct should be expected and in fact be condoned if a "public figure" speaks on campus.* Professor Franklin claims that a "public figure" speaking before an open meeting should expect extensive "heckling," interruptions and arguments from the audience. In support of that view, he cites the decision *In re Kay* (1 C.3d 930, 1970) for the assertion that "robust speech" is not only expected when a political figure speaks before an audience, but that shouted remarks from the audience actually contribute to the democratic values of the meeting. However, the conclusions of *In re Kay* were drawn from an entirely different set of circumstances—from a meeting in which a U.S. Congressman spoke during an election campaign before an unfriendly outdoor audience. In that instance, the speech was completed, and audibility was impaired only occasionally and locally.

Even setting aside these important differences, the Board is unwilling to accept the standards of *In re Kay* for an academic function at Stanford University. The presence of a controversial political figure on the platform does not in itself convert the function into a political meeting; other gatherings presenting speakers of differing views can be arranged at the University. Shouted invective and concerted disruption do not provide a better educational experience than exposure to divergent views, and the University has a responsibility to optimize such intellectual transactions. We do not believe that

the University should deach out to the external legal system for those standards used to protect political-pilic oratory. Nor does the Board accept Professor Franklin's view that in the classroom as in public meetings, "politeness" and orderly procedure and conduct interfere with the free expression of ideas.

3. Board Finding

The Board finds incontrovertibly strong evidence that a large number of those in the audience denied the right of speech, hearing and assembly to others on this occasion. The Board considers such action destructive to the fundamental values of the University, and does not believe that the Defense arguments cited above justify such conduct.

With the qualification that it became successively more difficult for each speaker to be heard, the Board accepts Paragraph 6 as a substantially accurate account, and sustains the statement.

C. Response to paragraph 7

The issues are considerably more complicated in relation to Paragraph 7, which charges that Professor Franklin "knowingly and intentionally participated in the conduct specified in Paragraph 6 [loud shouting, chanting and clapping], significantly contributing thereby to the disruption which prevented Ambassador Lodge from speaking and which forced the cancellation of the program." There are three matters in controversy here: first, whether and to what degree Professor Franklin was involved in the actions attributed to him; second, whether in those actions he did take he was "significantly contributing thereby to the disruption which prevented Ambassador Lodge from speaking and which forced the cancellation of the program"; and third, how Professor Franklin's conduct relates to his "appropriate function" and "duty" in the University.

(1) *Evidence on Professor Franklin's Involvement in the Disruption of the Lodge Speech*

(a) *Uncontested items in the testimony of witnesses from both sides.*

(i) Early in Dr. Campbell's remarks Professor Franklin shouted the word "napalm!" Other shouts from the audience were heard during the speech made by Dr. Campbell.

(ii) When Dr. Tompkins took the podium he began with a sarcastic reference to the "polite" audience, upon which Professor Franklin shouted, "Tell us about politeness at My Lai."

In his affidavit executed on February 24, 1971, Professor Franklin agrees that he "heckled" Henry Cabot Lodge; in particular he agrees to the nature of the shouted remarks attributed to him while Drs. Campbell and Tompkins were at the podium. Professor Franklin testified that the statement in his affidavit in which he "publicly acknowledged my heckling of Henry Cabot Lodge" referred to the Lodge program in general, and not to Lodge's own speech in particular.

(b) *Items on which the testimony, even if not offered by both sides, seems clear and credible.*

(i) Members of Professor Franklin's 1:15 class took a vote, not initiated by him, to leave the class in order to attend the Lodge speech; a number of them clearly wished to protest Lodge's presence in some fashion.

(ii) The fact that Ambassador Lodge was coming to Stanford was not generally known until a few days before his appearance. There is no evidence that the disruption in Dinkelspiel was specifically organized, although there was "word of mouth" communication to induce protesters having strong views about Lodge's culpability in connection with the Vietnam war to attend the Dinkelspiel program of January 11, 1971. In consequence, a significant portion of the audience was composed of people who intended to protest in some way.

(iii) Professor Franklin is not alleged by any witness to have participated in attempts to organize a protest ahead of time. His own testimony is that he intended to ask Lodge a difficult question at the conclusion of the speech. Professor Franklin can be assumed from the evidence to have known, however, that vigorous protest was probable and outright disruption possible.

(iv) There is no evidence that Professor Franklin was part of any organized group within Dinkelspiel. He went to the auditorium accompanied only by his wife and son, and was joined after he entered by others who shared his political views.

(v) The audience in Dinkelspiel became increasingly polarized as the program and the protest unfolded. The disruptive conduct was clearly initiated by the protesters; in consequence there was an intense counter-reaction on the part of the rest of the audience. Much of the noise that made it difficult to hear the speakers came from such intra-audience exchanges.

(c) *Items on which there is conflicting testimony.* The length of time between the Lodge incident and the Advisory Board hearings has increased the difficulty of reconstructing the details of Professor Franklin's actions, and this difficulty is apparent in the testimony offered by both sides. Moreover, the noise, personal political convictions, and participation of some of the witnesses clearly interferes with reliable observation of the events. This makes the problem of evaluating the credibility of testimony more difficult still, even where it is not conflicting.

It appears likely to the Board that two of the University's witnesses (Beckwith and Matthews) may have been confused in their identification of Professor Franklin, so that they attributed to him certain actions that may have been engaged in by another person sitting near him. By their own testimony, persons near Professor Franklin did engage in the sorts of disruptive conduct with which he is charged. Two witnesses (Geier and Laney) alleged in testimony that during the Lodge meeting Beckwith and Matthews accused them of disruptive conduct; however, these two witnesses testified that they had not participated in any protest activities whatever. Another University witness (C. Jacobs) did not see Professor Franklin "clapping or chanting," though she observed him "shouting." Only one witness (Hanley) gives strong evidence in support of all three items of disruptive conduct charged, although there is some dispute concerning the timing of the events he observed.

On the other hand, while all of Professor Franklin's witnesses assert that they did not see him engaging in "loud shouting, chanting or clapping" (save for the two shouts in 1-a-1 and ii), none can say with certainty that they had him continuously in view. One (Ramirez) actually testified that the auditorium was so dark as to make clear vision difficult, while a number of others were so positioned in the auditorium as to make a clear view of Professor Franklin exceedingly difficult. While Ambassador Lodge was at the platform, many persons in the audience were standing, interfering with the visibility of Professor Franklin to witnesses. Strong testimony on Professor Franklin's behalf, however, comes from witnesses (Geier and Laney) sitting directly in front of him; they could be expected to have heard him if he had engaged in the sustained activities with which he is charged, although they were not facing him during the critical period. Professor Franklin himself testified that he was "just about positive" he did not rhythmically clap.

The Board does not find the evidence strongly persuasive that Professor Franklin's conduct included "chanting and clapping" as specified in the charges. He did engage in "loud shouting" on at least two occasions when the rest of the audience was quiet,

and possibly at other times as well, but there is not strongly persuasive evidence that this shouting took place during the time Lodge was at the podium.

(2) *The Contribution of Professor Franklin's Conduct to the Disruption which Forced Cancellation of the Speech*

The Board is critical of Professor Franklin's conduct during the meeting. His verbal behavior, in our view, for a member of the faculty, since he should have known that shouts from a recognized leader during relative periods of calm—clearly audible even on the tape recorded from the podium microphone—would add to the excitement of those numerous members of the audience considering a disruption of the proceedings. However, after reviewing the testimony the Board does not feel that it has been presented with strongly persuasive evidence that attacks on the speakers constitute question-Professor Franklin's shouts triggered the demonstration or that he was personally guilty of "significantly contributing" to the disruption that finally forced the cancellation of the meeting. Given the mood of the crowd and the wide distribution of pockets of disruptive activity through the auditorium, it is plausible that the nature and intensity of the disruption would not have been significantly different without Professor Franklin's presence.

Many of Professor Franklin's witnesses claim that there was a deliberate attempt by Dr. Tompkins to bait Professor Franklin into disruptive conduct and call attention to his activity. The Board finds no evidence to support this claim since (as is uncontested) Professor Franklin clearly called attention to himself by interrupting Dr. Tompkins after one sentence with his comment about "politeness at My Lai." Indeed the Board believes that Professor Franklin, having in fact been identified in this public way, may well have decided not to open himself to possible charges by engaging in further disruptive activity.

(3) *Professor Franklin's Conduct as a Faculty Member as it Relates to the Lodge Incident.*

Professor Franklin has argued that in his shouted questions about napalm and My Lai he was actually performing his "appropriate function" as a university professor since he regarded the featured speaker as a war criminal. While such convictions may have impelled him to seek this means of acquainting the University with these atrocities, other routes are available which could have served the same purpose without infringing upon the rights of others. Professor Franklin's right to speak out in protest at a time and place of his own choosing must be balanced not only against the right of Mr. Lodge to speak, but also against the rights of others to hear and to assemble peacefully. The Board cannot accept the view that the interruption of University functions—let alone their disruption—is part of the appropriate function of a faculty member at Stanford.

We note, finally, that Professor Franklin has described his own role in the Lodge affair in terms of his larger role as a leader of the revolutionary movement. He points out that his position as a tenured professor is important to that movement, and that his loss to it would be more serious than that of a student; and he employs his view in explaining his own caution. At the same time, he describes the disruption at the Lodge speech as too weak, and clearly indicates his own preference for more violent actions. This combination of views has the effect of making incitement almost a way of life; and it raises serious questions. Quite aside from this immediate charge, may a professor regularly encourage students to engage in proscribed conduct while he deliberately refrains from the same activities? We return to this issue later, in connection with the other charges.

4. Board Findings.

In view of items 1) and 2) above, the specific charges against Professor Franklin as drawn in Paragraph 7 are not sustained.

FINDINGS OF FACT: BACKGROUND TO EVENTS OF FEB. 10, 1971

A. Preface

The climactic events of February 10, on which the remaining charges focus, did not occur without warning. Rather, the preceding several days were characterized by overt turbulence and escalating protest activities. To understand the events of February 10, it is helpful to have some background. We therefore now briefly sketch events which convey the atmosphere of those days and are pertinent to the remaining charges.

Dissatisfaction with the Indochina war was rising again because of rumors that an invasion of Laos was about to begin, perhaps with participation of American armed forces. In addition, the Stanford Judicial Council had been holding hearings on charges brought against students who were accused of disrupting the January speech of Henry Cabot Lodge. Professor Franklin and his associates were strongly opposed to these charges and to the campus judicial system in which they were being considered.

B. Chronology of events prior to Feb. 10, 1971

On Saturday February 6, at about 1 a.m., arson was attempted on the small wooden building known as the Free Market—the headquarters of the conservative Movement whose members frequently observe and photograph demonstrations. Later Saturday evening, at 9:40 p.m., Molotov cocktails were thrown into the first-floor office of the ROTC building. Three false fire alarms were registered soon thereafter at scattered points on campus. Moments earlier, on the other side of the campus firemen had responded to a fire in a trash barrel behind Ventura Hall and a false alarm at the Boathouse.

On Saturday, February 7, the invasion of Laos by South Vietnamese troops with U.S. air support was officially announced. At 8 p.m. in Dinkelspiel Auditorium a crowd of some 600 persons attended a performance of the San Francisco Mime Troupe sponsored by the Stanford Community Against War and Fascism. Before the Mime Troupe began to perform, it was announced that Laos had been invaded. A telegram sent from Ann Arbor, Michigan by Madame Binh, head of the North Vietnam delegation to the Paris Peace Talks, was read which called "for mobilizing peace forces in your country." The Coalition Against the War in Indochina distributed a flyer entitled "It's Official!! Laos Has Been Invaded," which spelled out Madame Binh's message in detail and called for a rally at White Plaza on Monday, February 8. Leaflets were distributed by a antiwar group called The Inquisition, demanding that the University "release all information on the uses of the Computation Center" and that war research at the Center "immediately be halted." In this leaflet the Stanford Research Institute computer program known as Gamut-H was described. The program was said to stimulate the logistics of deployment of helicopters and ships and the leaflet asserted that the "work is directly applicable in Indochina."

After the performance, at about 10:30 p.m., over 200 persons protesting the Laos invasion broke about 100 windows in several buildings, including the Graduate School of Business, Undergraduate Library, Post Office, Engineering Corner, Terman Engineering, Placement Center, Cubberly Education, Lou Henry Hoover Building, and the Inner Quad. In addition to campus police on duty, 35 Sheriff's deputies were brought on to campus briefly after the first reports of property destruction, but the "trashing" quickly subsided and the deputies were not deployed.

Windows in two Stanford University police cars were broken when spotlights from one of the cars were focused on 15-30 demonstrators hurling rocks into the Lou Henry Hoover building. Fights broke out between demonstrators and members of the Free Campus Movement who were attempting to halt the trashing. The University Computation Center was evacuated at 9:30 p.m. after a telephoned bomb threat was received, but after a search people re-entered the facility. (This was not the first threat to the Center. In the spring of 1970, a part of the computer complex in Polya Hall was the target of arson, but quick action averted serious damage.)

On Monday, February 8, the noon rally was attended by about 800 in White Memorial Plaza. The leaflet from The Inquisition on the SRI war-related computer program was distributed together with a flyer entitled "Do It!" "Do It!" encouraged formation of tight affinity groups to "do whatever actions you feel ready to do" and stated "last night's action was the first in a series in response to the invasion of Laos." It anticipated trouble with police and with "right wing fascists," and gave suggestions for handling such trouble.

An "Open Letter to the Stanford Community" from the Inquisition also became available at about this time. It stated that the Computation Center was being used by Stanford Research Institute for "war research." Six demands were made in the letter, including making public the identity of all non-Stanford users of Stanford facilities and phasing out of all Stanford research funded by the Department of Defense; attached to this letter was reply made by Provost Miller to some of these demands.

About 100 antiwar demonstrators left the rally and then went to the near-empty Faculty Club dining room searching for members of the Stanford Board of Trustees. The group then left for the Graduate School of Business where at 1:25 p.m. about 150 persons jammed into the ground level lobby, blocking entry to a room in which a trustee committee was meeting and holding the committee virtually under siege for 45 minutes. At 1:45 p.m., C. D. Marron of the Santa Clara County Sheriff's Department declared it was an unlawful assembly, with the group chanting back: "Power to the People." The crowd dispersed when a squad of sheriff's deputies appeared. One plain-clothesman suffered a head laceration when hit by a thrown rock. At 2:30 p.m. about 24 police dispersed some 300 demonstrators who had reassembled outside the ground floor of the Graduate School of Business.

At about 2:45 p.m. part of the group of demonstrators headed for the Old Union. About 150 persons arrived at the courtyard, and 50 of them proceeded into the Union lobby. A meeting was then called in the lobby, and the Old Union was selected as a "strike center." At 5:30 p.m. about 20 Santa Clara Sheriff's Deputies moved into the rear (West) of the Old Union, sweeping about 40 remaining occupants into the courtyard. Simultaneously some 15 members of the San Jose Tactical Squad moved to the front (East) of the Old Union. At about 5:45 p.m. the San Jose units left the scene. Subsequently, however, numerous squads of Santa Clara County and San Jose police patrolled the campus on foot as well as by car.

On Tuesday, February 9, there was an afternoon meeting in the Physics Tank, following the Stanford Judicial Council hearing, in which a "Cambodia-type strike" protesting the invasion of Laos was planned. In the evening, beginning at 8 p.m., a three-hour session was held in Dinkelspiel Auditorium, attended at the peak by approximately 800 people. A recording of the meeting taped by KZSU is available, and an analysis of the speeches at the session is presented in the following section.

C. Analysis of the Dinkelspiel rally speeches of February 9, 1971

An important part of the context for the three speeches of Professor Franklin on February 10th is the Dinkelspiel rally of February 9th. That lengthy evening rally did much to set the stage for the events of the following day. Its recurrent themes may help in understanding the meaning of some significant terms used in the February 10th speeches of Professor Franklin. Indeed, in the hearing Professor Franklin urged us to consider this meeting carefully in order to understand the subsequent events. He participated in the February 9th rally, made a speech there, and was referred to by several other speakers. [See Appendix I] His leadership position may reasonably be inferred from the tape of this meeting.

Many speakers emphasized Stanford's complicity in the war. They emphasized the necessity of concentrating protest activity on the campus rather than off it, and doing so in a powerful way that would impair the University and hence the war effort.

There were repeated linkages of the war in Southeast Asia with the struggle at Stanford, particularly in relation to police on campus. The police were referred to as pigs and were described as an occupation army. Harassment of police was repeatedly advocated. One speaker indicated that resistance to the occupation army could best be carried out late at night. Some speakers pictured the protesters at Stanford as sharing in a common effort with the people of Southeast Asia, especially the NLF and Pathet Lao. The following remarks, which were made early in the rally and echoed later, exemplify this approach:

"What we have found through research and looking at how the war is carried out is that it is an immensely technological war and that Stanford is very useful. And so the only reason that we would attack the University would be on the grounds of effectiveness, so I would try to direct the demands toward specific things in the community and that are attackable like the computer center, like the Gamut-H program that's going on there. Also, in the past things like the A3M have made other movements start so with the effectiveness here and exemplary action for other universities we hope to take to close out and down things which we think are very valuable to the carrying on of this type of war to make it that much more costly." This is followed by another speaker:

"I think that we should take the strongest action possible tomorrow and the next day and the next day after that. But that we should also be addressing ourselves to questions of, and the other things we can begin to move on immediately are some of the demands that have already been raised like ending the occupa... the armed occupation of this community. That kind of thing we should begin to move on immediately."

There were many references to the Computation Center. It was clearly the object of intense interest, both for its alleged war complicity and for its vulnerability. It emerged as the prime target for protest activity. The discussion of the Computation Center may be illustrated by a speech in the middle of the meeting:

"I'm not even going to talk about a strike. It doesn't matter either way. But what, I think that it's apparent that the place that has to be hit, and has to be hit hardest and can be hit not only here but in every college campus and in every city in the country, are the computer centers, [applause, shouts of 'Right on!'] and they don't have to be hit violently. Computer centers are the most vulnerable places anywhere. If you've seen the lights blink every once in a while with the power shortage, if that were to happen in a computer center for a millisecond, the computer has to be shut down, and reloaded."

And that's at least an hour delay. Now what does an hour delay mean to a computer in the computer center? Well, it could mean just an hour delay. It could mean a day delay. It could mean a week delay. It could be a month delay or a year delay. [laughter]: It's, nobody knows. It's dependent upon what's destroyed in just that power shortage. What's destroyed in core storage. What's destroyed as to the records. What could be destroyed in the tape reserve rooms by the temperature going too high. Nobody knows."

[Laughter, by speaker and others]

Other references to the Computation Center included a variety of ways in which it might be shut down and put out of service; for example, by blocking access to it with hundreds of thousands of people, by attacking it, even by destroying it. Occasionally, a word of caution was expressed regarding the more violent possibilities.

At various points throughout the meeting, references to coercive and violent protest activities were received with applause or laughter. Acts such as seizing and occupying a building for long periods tended to be treated casually. Violent acts were sometimes spoken of explicitly, and sometimes merely hinted at. Audience response indicated that these hints evoked considerable interest. Fifteen speakers advocated actions in protest on the campus that were most likely coercive or violent in nature. The following speech illustrates the treatment of coercive behavior.

"Yeah, let me straighten that out. I did not advocate any kind of violence about this computer. I tried to say that the beauty of the computer center was no violence is necessary. None at all to get, to get what you want. Simple little sitting in doorways with a thousand people, you know, no violence. You don't have to break a window. Not one single window. And you can still affect problems with this computer center. Without any destruction whatsoever. So there's no violence that would be necessary, please. [Laughter] . . . is used by everybody. If you want to hit industries, you hit the computer that they're using. That stops them from functioning. But you have to hit them with enough people to stop normal access.

Several speakers, notably Braunstein, advocated action on different levels, violent and non-violent, each helping the protest movement in his own way. A spectrum of activities was included, some of which were clearly coercive and some even overtly violent. Imagination was required to think of ways to disrupt the functioning of the University and harass the police.

Altogether, six speakers favored pursuing this multiple-levels-of-action approach, embracing a broad spectrum of protest activities. The general tendency of these speakers was to favor the more disruptive end of this range of activities.

The flavor of this approach is well exemplified in the speech of Braunstein, which is worth quoting in its entirety.

"One thing we've been noted for over the past few years when we've done any action, and again tonight, is a lack of imagination. And, you know, I'd like to address this not to the people in this audience who know how they're going to vote and are going to participate in anything, but people listening on radio wondering what can I do to relate to all this? How can I help? I'm not willing to get busted in front of the Computer Center. Or what have you. And there are many ways, and all you have to do is just think about it. Last night there were some people out playing football who kept just dozens of police busy asking for IDs all the time. At one point they tried to bring the football into the Computer Center and it was searched. The football. [applause] Things like this that tie up the opposing forces, while are not directly going to end the war in Vietnam, are making other people's actions be-

come more effective. And anybody who says "I can't relate to this movement because I don't agree with your tactics" just has a bad imagination, and you know, there are many levels of other action.

"There are people breaking windows, there are people who sit in front of the ROTC building for days, and days, and days, after other people got tired. These people just were there. They deserve, you know, our unending thanks. And there are other people who have done other things, who for some reason or other don't want to claim credit for it. All those people also deserve our thanks. [Applause.] And . . . [KZSU interrupts to say speaker is Yale Braunstein] . . . like the guy who two years ago drove into a power pole up in Woodside and put the Computer Center out for a week. Now they've built an emergency power system, but you know, there are other actions both violent and non-violent, imaginative and very mundane, all of which can help us and everybody, even if you, you object to how the final vote comes out, should find some way of keeping them busy in their off hours and should devote more and more of that time to helping the Movement." [Applause.]

As the meeting proceeded, a suggestion made by Janet Weiss elicited considerable acceptance: to adopt the tactics of a "mobile strike." The word "strike" was used often in the meeting. Some of the usage was unclear, and most of it bore little relation to the usual meaning of the term in a labor dispute—i.e., the concerted withholding of labor on a voluntary basis. In the latter part of the Dinkelspiel rally, consensus grew on the "mobile strike" or "mobile strike force," as the meeting's chairman referred to it. The "mobile strike" was intended to be a series of disruptive acts, hopefully leading to a total shutdown of the University. Occupation of the Computation Center was considered a good way to begin. Then, if the occupants were evicted by the police, another building could be occupied, and then other actions taken as issues and targets become apparent. Nine speakers forcefully advocated a "mobile strike," clearly including coercive acts within the scope of such a "strike." Since Janet Weiss' formulation seemed to be quite influential, it is worth quoting her remarks on this subject.

"I've heard that at some places they've used a tactic of shutting down one building with a large group of people, and then going and shutting something else down so that nothing is shut down continually but things are shut down, you know a lot of things are, are shut down at different times, and maybe that's the kind of strike that would keep people doing something, keep them involved in it, so that you don't feel like you're just sitting there all day, bored and cold. I think another thing, though, that, one thing that seems to me is clear that we need, whatever kind of action we have as a focus, is a lot of other little peripheral actions, like the actions about people going out in groups and causing the pigs that are on the campus to really have to do their jobs. People can put up signs and posters in bathrooms and buildings, and things. You see the pigs don't go into the buildings, and any number of things that we can do from inside the building to cause a lot of disruption, havoc and chaos on the campus, and to keep it from functioning properly, without really risking a lot of things and things that might be very pointed. Now that's the kind of things that I can see in a strike that would work, but I'd kind of like to, if we're going to talk about a strike, I think that we should have some idea of what we're talking about. Because I don't think, maybe I'm wrong, that we're going to get a lot of people interested in a strike which means people sitting around in different doorways, very isolated from each other for hours at a time."

Near the end of the meeting, the Hoover

Institution was still mentioned as an attractive target.

"Well, anyway, I was going to suggest that if there is a rally scheduled for tomorrow or however we are going to do it, we should probably move from there, when we'll have a crowd already, and I think we should take over Hoover and that, you know, I think that they wouldn't let us stay too long in Hoover before they brought pigs on to campus in daytime and, which would be, you know a very nice thing to happen, you know, for the "movement," I think. If we went to the Comp. Center, first of all I don't think we'd have enough people by tomorrow to go to the Comp Center and secondly it's pretty far removed from the central part of campus. Hoover's right in the center and I think it would be a good thing to do tomorrow. And we'll be kicked out before 5, but that's good too."

At the end of the meeting, there was general agreement that ways must be found the next day to recruit a larger group of participants for the "mobile strike," whether it would begin at the Computation Center or elsewhere. Concern was expressed by four speakers that the number remaining in Dinkelspiel was too small to permit an effective "mobile strike." This was advanced as the primary reason for calling a noon rally at White Plaza on February 10.

FINDINGS OF FACT: WHITE PLAZA INCIDENT AT NOON, FEB. 10, 1971

A. Charges

The relevant University charges concerning the White Plaza incident are contained in Paragraph 8 of the "Statement of Charges" dated March 22, 1971. This paragraph reads as follows:

"8. On February 10, 1971, beginning at about 12 p.m., a rally was held at White Memorial Plaza to, among other things, discuss methods of protesting developments in the war in Indochina. Over five hundred students and other persons attended. During the course of the rally two principal courses of action were discussed, one being to work in the non-University community to bring about changes in government policy, the other being to disrupt University functions and business. Professor Franklin intentionally urged and incited students and other persons present at the rally to follow the latter course of action and specifically to shut down a University computer facility known as the Computation Center. Shortly thereafter a large number of students and others left the rally and went to the Computation Center whereupon many of these persons did in fact occupy the Computation Center, prevent its operation and obstruct movement in and out of the building for several hours, terminating this unlawful activity only when ordered to leave the building by the police."

B. Nature of the charge

The general charge is that Professor Franklin urged and incited the disruption of University functions; the specific charge is that he urged and incited his audience to shut down a University facility, the Computation Center. Effectively, this means that his words, including their delivery and their context, significantly increased the likelihood of prohibited conduct on the part of his audience; it means, moreover, that he must have anticipated that his speech, given its delivery and context, would significantly increase the imminent likelihood of prohibited conduct.

C. Findings of fact

1. Prominent Themes in the White Plaza Rally

The noon-hour rally at White Plaza, attended at its peak by about 700 people, had been proposed the night before at the conclusion of a rally at Dinkelspiel Auditorium. Most of the speeches given at the White Plaza rally were available on tape recordings.

Only a portion at the outset was missing, and this was covered in testimony. The following themes emerged prominently in the course of the White Plaza rally:

a. Many speakers discussed ways of protesting the war in Southeast Asia. Three speakers, including two student body leaders, favored an off-campus focus of protest. They were severely criticized by five subsequent speakers, who characterized liberal war protest in such terms as "counter-insurgency." This may be illustrated by the following speech:

"Yeah, I'd just like to point out that the only time the liberals and moderates come out of the woodwork is when there is radical action on campus. . . . That's the only way moderates and liberals can, can get off their——is when the people around them are doing these violent things which you consider to be useless."

b. On four occasions, there was reference to selection of a protest target on campus; the desirability of alternative possibilities was considered.

c. The Computation Center was referred to often throughout the meeting. Its suitability as a protest target was cited. In the final speech of the rally, Professor Franklin called for shutting down the Computation Center.

d. Some speakers emphasized Stanford's war complicity and the desirability of shutting down the University in order to end that complicity.

e. Four speakers made reference to the concept of different people taking protest action on different levels, each doing his own thing. Three of these clearly included coercive and violent behavior within the spectrum of approved activities, and the fourth is unclear on this point. The following quotations help to clarify this important theme:

"And so closing down Stanford is really a concrete blow against the war. You see, that's a concrete way of stopping, stopping things that are going on that help the war by stopping that kind of research, by stopping the programs that are run in the computer center. . . .

"It's true that if we're writing letters to congressmen we're probably not doing that much. But by striking the University and by taking, by taking whatever kinds of action we can, you see, on a lot of different levels, some people may want to take over buildings, some people will want to boycott class, some people will want to cause classes to be boycotted, you see it's not much good if English classes and the French class aren't going on, but the Business School classes and the Electronic Engineering classes are going on and the Department of Defense research contract are still being carried out.

"KZSU: The crowd is still growing here at White Plaza, now about 700 people.

"[new speaker] What really amazes me is like everybody that's here right now is like obviously against the war. Now all this friction and all this——that's going on between radicals and conservatives and liberals or whoever the——it is, it's all just friction. Now, as long as people who are writing letters or doing strikes, or breaking windows or what, everybody's doing their own thing to stop that——far over there. So, everybody do their own thing, and let's stop that war now and altogether." [applause]

f. The term "strike" was used several times, though less than it had been the previous night at the Dinkelspiel rally. Once again, it seemed to bear little relation to the meaning of "strike" in labor disputes. Rather, it seemed to refer to a broad spectrum of activities, some non-coercive and some coercive. The most prominent connotation was that of the "mobile strike" introduced February 9th at Dinkelspiel—closing down one university facility after another by whatever means proved feasible.

g. Six speakers made favorable reference to

coercive or violent behavior. This may be illustrated by a recorded passage from Professor Franklin's speech:

"... so want to talk about, about high consciousness, the high consciousness is the consciousness of the people most oppressed by U.S. imperialism, which includes as a main institution of that Stanford University. And that's why whenever people from that community, whenever poor working class youth from that community, get a chance to come on the campus at Stanford and do a little material damage, they are very eager to do so. Because they recognize what Stanford University is, even if people here don't."

2. Summary of Professor Franklin's speech

Professor Franklin gave the closing and longest speech of the rally. (See Appendix II.) He called for a willingness to sacrifice in the service of protest activity. He criticized student body leaders for allegedly subverting the activity of protesters. He gave some of his personal history in antiwar activity. He cited a poll indicating that people with little education expressed more opposition to the war in Southeast Asia than those with higher levels of education.

At the passage quoted earlier referring to material damage by working class youth at Stanford, Professor Franklin's delivery shifted to a higher intensity, remaining at this level until the conclusion. He continued later.

"Well, when we talk about, see we're just ripping off the term strike when talking about striking at Stanford. This isn't a strike. We're not risking anything. It's voluntary boycott—a shutdown of some of the activities of the University as a demonstration of something. Now, now what we called a strike last year, and it lasted really about three days and it kind of dragged on, and you know, in an odds and ends way and some people did it. But just the fact that we were able to move our little finger that much, that electrified the working people of this area. . . ."

He ended the speech by saying,

"See, now what we're asking is for people to make that little tiny gesture to show that we're willing to inconvenience ourselves a little bit and to begin to shut down the most obvious machinery of war, such as, and I think it is a good target, that Computation Center. [applause and shouts of "right on. . ."]"

Immediately after Professor Franklin's speech, the chairman asked for a vote to choose between the Computation Center and Hoover. About 100 hands (primarily in front) voted affirmatively on the question of shutting down the former, whereupon the chairman announced that a majority favored this course. He said, "And so I would suggest that we go over there and visit it." At that point, a voice is heard calling, "Shut it down," echoing the comment made just before by Professor Franklin and the meeting's chairman.

As the crowd was leaving they were instructed,

"When people go over to the Comp Center, they should all go in a group and move relatively slowly so that the group can stay together. Also the meeting at 8 o'clock tonight in the Old Union Courtyard is a very important meeting because we can decide what we want to do tomorrow. There are some things that we can't close down now, but we can close them down if we get to them early in the morning."

3. Interpretation of the Meaning of Professor Franklin's White Plaza Speech.

a. Professor Franklin's Own Interpretation

There were several differing points of view regarding the meaning of the speech given by Professor Franklin. Professor Franklin himself in an affidavit dated February 24, 1971 described the meaning of his speech:

"Actually, in order to understand either the content of my speech or that of the rally itself, it is necessary to see it in relation to

the events of the previous evening. The debate was essentially over the same issues, that is, whether to focus off campus or call for a strike on campus, and whether a strike could be effective. Much of the debate was repetitious of the previous night, but since most of the people at that meeting felt bound by the vote, those who had wanted to stop the munition train did not make their proposal. The main spokesmen for off-campus work were Bob Grant and Larry Diamond, who proposed doing precinct work to elect so-called peace candidates. It was my belief that these two were not being honest, and that their main purpose was to prevent any effective action and to advance their own political careers. It was with this in mind, plus a sense that many people were becoming very impatient with the idle debate of the rally, that I rose to speak. My intention was, as it had been the previous night, to build the anti-war movement on the campus. . . ."

He concluded this portion of the affidavit:

"Let's move our little finger again and begin to pick up where we left off with our strike last spring. Let's begin to shut down the machinery of war. I think that the suggested target of the computer center is as good a place to begin as any. So the content of the entire speech was to strike against the invasion of Laos. In making this speech, and the one on the preceding night, I thought that I was operating entirely within the precedent established during the invasion of Cambodia when the overwhelming majority of the faculty and students of the majority of departments and schools of the University voted to go on strike. For instance, my own department on May 4, 1970 voted overwhelmingly in favor of a strike for an indefinite period, demanding: 1. An immediate withdrawal of all American forces from Southeast Asia. 2. The end of political repression at home, in particular the government's systematic attempt to eliminate the Black Panther and other political dissidents; 3. The removal of ROTC from the Stanford campus by the end of the academic quarter; 4. An end to all war-related and secret research on the Stanford campus by the end of the quarter."

In the hearing, he described the meaning of his speech in essentially similar terms.

b. Hearing Witnesses' Interpretation

University Administration witnesses testified that the crowd was moved by Professor Franklin's speech and that he served as a catalyst to get the group moving in the direction of the Computation Center. One of Professor Franklin's witnesses felt that the Computation Center was an appropriate target. He said that a "shutdown" of the University could range from "blast various parts of it from the face of Santa Clara County" to taking over a building as had occurred at Encina Hall the year before. One of his witnesses testified that Professor Franklin was trying to bring factions together but didn't influence tactics already decided; two felt the decision to go to the Computation Center had been arrived at the night before and the purpose of the speech was to support a Cambodia-type strike; two thought Professor Franklin's speech was just educational; two thought that he was not as influential as a middle-aged salesman who had spoken earlier; one felt that the purpose of the White Plaza rally was to choose a target and to recruit more people.

4. Summary of Principal Points of Defense.

Several prominent elements recurred in defense testimony and argument on the White Plaza speech:

"(a) A widespread inclination to shut down the Computation Center, and to carry out a variety of disruptive activities, was formed over the preceding several days. It was justified in terms of Stanford's complicity in the war and the Gamut-H program at the Computation Center. It was con-

sistent with long-standing antipathy to the war in Asia and to Stanford's allegedly vital role in the war. It was exacerbated by the current news of military action in Laos.

"(b) Such an inclination toward disruptive activity in general, and toward the Computation Center in particular, was widespread in and around the University, especially in the 'movement.' The persons inclined to these actions would have carried them out regardless of any role Professor Franklin might have had in encouraging, fostering or facilitating them.

"(c) Professor Franklin's speech had little effect on those present. It was political, analytical, and educational, rather than tactical. It presented no danger to persons or property.

"(d) He was simply advocating a voluntary boycott or legal strike at the Computation Center. Even if his speech could be construed as advocating disruption of the Computation Center, he had in mind no seriously adverse consequences only a vigorous mode of protest of the war and the University's role in it."

5. Analysis of Professor Franklin's White Plaza Speech, February 10

a. Background and Foreseeable Consequences of Computation Center Occupations:

The fact that potential for major damage within the Computation Center existed must have been well known to Professor Franklin. The mechanisms to achieve such damage were thoroughly identified during the Dinkelspiel meeting the previous night. Highly publicized computer occupations leading to extensive damage had recently occurred at other universities. Testimony indicates that the decision not to damage the computer in the face of eviction by the police was taken by the demonstrators after the occupation was in force. Professor Franklin could reasonably expect that an occupation of the Computation Center would involve great risks to the computer and to the members of the University community who rely upon it, including the staff of the Computation Center. It should be emphasized that the research and education of many people throughout the University were in jeopardy.

In some respects a computer plays a role in a modern university not unlike that of a library: it receives, catalogues, processes and stores information and it makes it available in various forms as required. To attack a computation center because some of its information is considered evil is little different from attacking an entire library for harboring a few evil books. Professor Franklin should have known that the occupation of the Computation Center would lead to an agonizing decision by the University administration whether to request police to evict the occupiers, thereby ending a costly seizure at the expense of an increased risk of damage.

The demonstrators showed no serious inclination to consider the genuine complexities of computer use. They made minimal inquiry about uses of the computer—considering only on-line medical use, and not investigating even that use thoroughly. They showed no concern for the relation of the computer to other problems involving human welfare. As a consequence of their action, 700 to 800 jobs were not run that day; no one knows how many more would have been impaired if the occupiers had not been evicted. The social cost of vigilante action in regard to computers or similar facilities can become very high.

We heard no evidence that demonstrators made any serious attempt to communicate with responsible officers of the University in order to inquire about the state of the Gamut-H program, or the ways in which research policies are administered in regard to computer use, prior to the forceful occupation of the Center. Indeed, one of Professor Franklin's witnesses testified that the Gamut-H program was known to the

"movement" for a week or two, but a decision was made to delay its announcement pending a favorable moment for protest activity. The military action in Laos provided such an opportunity. If the news of Gamut-H could be held a week or two in private, why was instant action suddenly required on February 10? Professor Franklin and his witnesses agreed that advocacy toward shutdown of the Computation Center proceeded on the basis of publications and statements of The Inquisition; shutdown of the Computation Center was certainly not a last resort measure. Thus, a poorly checked complaint was made public after a tactical delay and then rapidly shifted into coercive action with only the most rudimentary attempt at negotiating the grievance. Finally, in view of the expressed rationale for forceful occupation of the Computation Center, it is noteworthy that the Gamut-H program was not even mentioned at any point in the lengthy tape recording of the White Plaza rally.

b. The Speech Itself

Professor Franklin urged the Board to consider his speeches in their full context. He particularly called our attention to protests at Stanford, to the events of the preceding few days, and to the Dinkelspiel rally of February 9. These have been summarized earlier. Throughout these turbulent events, a persistent difference of opinion is manifested between those who place primary emphasis on the University's role in the war and those who place primary emphasis on the role of the government. Professor Franklin clearly belongs in the former category. In a Dinkelspiel speech of February 9th and the White Plaza speech of February 10th, he is severely critical of the University's role in fostering the design and execution of the war. He strongly urges his listeners to direct their attention to the University, expressing hostility toward its trustees, administration, and some student body leaders. He views the University as centrally culpable in the war, and directs attention away from the federal government. This characterization of the University has the effect of justifying strong protest or retaliation.

Within this framework, the "movement" chose to focus attention on the Computation Center as a symbol and instrument of the war. The February 9th rally is full of angry references to the Computation Center—the culpability of its users, its vulnerability, its suitability for attack and possibly even for destruction. Professor Franklin must have been aware of this danger to the Computation Center—to its functions, its hardware, and to the large number of people who rely upon it in their work. These matters had been discussed extensively at the February 9th rally in which he was an active participant. He also took part in an investigatory march that followed the February 9th rally, a preparation for the likelihood of disruptive action the following day. He admits in testimony and argument that he gave strong support to the correctness of action against the Computation Center before, during, and after its occupation, specifically including the White Plaza rally.

In the main, the purpose of the White Plaza rally of February 10th appears to have been: (1) to increase the numbers available for protest activity; (2) to settle firmly on a target. In respect to (2) the Computation Center appeared to be the most likely target as a result of the February 9th meeting, but the Hoover Institution was still under consideration; two student leaders advocated nondisruptive political activity, but they were strongly criticized by Professor Franklin and others. Professor Franklin was a highly respected leader of a group advocating intense hostility to the University as well as disdain for nondisruptive modes of protest and for electoral politics. His White Plaza speech contains an approving refer-

ence to material damage to Stanford University, and his testimony on these events provides repeated justification for such damage. At White Plaza on February 10th, this orientation was brought sharply to bear on the Computation Center.

It is uncontested that at the White Plaza rally Professor Franklin concluded his speech by stating "... what we are asking is ... to begin to shut down the most obvious machinery of war, such as, and I think it is a good target, that Computation Center ... " and that subsequently the Stanford Computation Center, although officially declared closed, was forcefully occupied, resulting in shutdown of operation and minor damage. It is also uncontested that many of the occupiers were in the audience of Professor Franklin's speech.

Professor Franklin has also asserted that a firm decision to shut down the Computation Center was already reached on February 9, and that therefore his speech on February 10 could not have contributed to the subsequent course of events. The evidence does not support the assertion. The meeting on February 9th held in Dinkelspiel Auditorium identified a spectrum of options for action, and two—action against the Hoover Institution and against the Computation Center—were left as leading candidates. The preceding summary of Dinkelspiel (February 9) and White Plaza (February 10) rallies makes this clear. Moreover, several witnesses (both for the administration and for Professor Franklin) testified that specific action against the University was not settled, or that they were undecided whether to participate in the Computation Center action until they attended this rally at which Professor Franklin gave the final speech.

C. Professor Franklin's Use of the Term "Strike"

The Board has found it helpful to pay special attention to the context for subsequent events provided by the Dinkelspiel rally of the night of February 9th. Both the University Administration and Professor Franklin devoted considerable attention to this background. In that connection, we think it important to note that Professor Franklin himself placed special emphasis during the hearing on the importance of that rally for providing context. For that reason, we find the introduction to his own analysis of that topic in this supplementary written brief (page 106) rather unreasonable. He says "The administration attempts to prove that the real meaning of Franklin's speech can be found lurking in several statements gleaned from the lengthy meeting at Dinkelspiel." If the Administration did so, it was at Professor Franklin's own invitation.

Our view of the matter is that Professor Franklin was right the first time: the Dinkelspiel rally does provide important insights into the speech that follows. It is analyzed extensively above, in the section on "Background to Events of February 10, 1972." We here comment on the view presented by Professor Franklin in his supplementary written brief. The main thrust of his argument is that the rally was a very general discussion, organized primarily along the lines of planning a strike; he says (p. 109) "The reason there were no plans for a picket sign is that there were no plans for anything beyond a meeting and a general sort of strike." He also asserts (p. 107) "There was never a real discussion of the variety of ways the Computer Center could be shut down except along the general lines of a strike."

In fact, his account tends to select heavily those speeches from the Dinkelspiel rally that emphasize the non-coercive aspects of the kind of "strike" he is talking about. For example, he ignores the following speech early in the rally:

"And so the only reason that we would attack the University would be on the grounds of effectiveness, though I would

try to direct the demands toward specific things in the community and that are attackable like the Computation Center. . . . In addition, there are two other early calls to stop talking and commence action. Later, Braunstein recommends a range of actions, including some that lie well outside the range of legal actions, that is subsumed under the term "strike" when used in its normal context.

Indeed, the term "strike" clearly has a different meaning to members of the "movement" at Stanford than it does in ordinary usage. When preceded by the modifying words "Cambodia-type," it encompasses a wide range of actions, including some that are legal and some that are illegal. The introduction of the concept of a "mobile strike," which takes place well before the end of the Dinkelspiel rally, was clearly a modification that the number of people was inadequate to close a number of things simultaneously, but that they might succeed if targets were attacked *seriatim*. It is clear that in all of these uses, the term "strike" encompasses a wide range of activities. In his supplementary written brief, Professor Franklin borrows the conventional meaning from the labor context, and then employs it as a flag in which to wrap a much broader range of conduct. All of the speakers who spoke late in the rally, after they had developed some consensus around the notion of "mobile strike" and were discussing a target, used language that clearly involves the expectation of being confronted by the police, moved out of buildings, and the like. Persuading workers to leave their jobs, standing in the doorways to bear "moral witness," picketing—these activities get little or no prominence in the discussion, although Professor Franklin tries to persuade us that these activities are really the dominant elements of a "strike." The context so established is not substantially changed, in our view, by the earlier speakers at the White Plaza rally.

The words "shut it down" imply a cessation of function that can sometimes be achieved by a strike, strictly defined, but may be achieved by other means as well. From a careful reading of the Dinkelspiel transcript, we are persuaded that the context for the White Plaza rally was one in which the prospective shutting-down of the Computation Center was to be achieved *primarily* by means going beyond the range of legal "strike" tactics. We find Professor Franklin's use of the term "strike" disingenuous, and we believe that his own exhortation to "shut down" the Computation Center was, given that context, an intentional invitation to employ such extra-legal means as might be necessary.

In summary, could Professor Franklin reasonably have expected that his speech would have contributed to the likelihood of the occupation? Professor Franklin asserts that he was only advocating a legal strike or voluntary boycott of the Computation Center, or alternatively that he gave no thoughts at all to the consequences of his speech. The preceding analysis of the Dinkelspiel rally makes this a highly dubious proposition. Although there clearly were discussions of a "strike" against Stanford University during the rally at Dinkelspiel and during the early portions of the White Plaza rally, there is no evidence for preparation for a legal strike or boycott: no plans for picketing; no direct effort at persuasion of the workers of the Computation Center to withhold their labor or for the users of the Center to boycott the facility. In the present context, the term "strike" was a kind of euphemism for a broad range of protest activities, including peaceful, coercive and violent activities. We conclude that Professor Franklin must reasonably have expected that his advocacy of "shutdown" would be interpreted by at least a substantial portion of the audience as calling for forceful disruption of the operation

of the Center. Indeed, we believe that this is what he meant.

Conclusion

We conclude that Professor Franklin must reasonably have expected that his speech at White Plaza on February 10, 1971, would increase the likelihood of illegal occupation of the Computation Center immediately following his speech, and that there was risk of serious damage to the computer and its users. The Board finds the evidence strongly persuasive that Professor Franklin urged and incited his audience at White Plaza towards disruption of University functions and shutdown of the Computation Center. We therefore sustain charge No. 8.

FINDINGS OF FACT: COMPUTATION CENTER INCIDENT

A. Charges

The relevant University charge concerning the Computation Center incident is contained in paragraph 9 of the "Statement of Charges."

9. Further, on February 10, 1971 and in connection with the activity at the Computation Center described in paragraph 8, students and other persons were arrested for failure to disperse after orders had been given to clear an area around the Computation Center. Professor Franklin significantly interfered with orderly dispersal by intentionally urging and inciting students and other persons present at the Computation Center to disregard or disobey such orders to disperse.

B. Findings of fact

1. *Occupation of the Computation Center.* Shortly before 1:00 p.m. on February 10, 1971, the Computation Center building was closed on the basis of a telephone order from Provost Miller, but the computer was kept running. Handwritten notices were posted on the doors of the Computation Center; doors, windows, and gates were locked; and two campus policemen were stationed at the front door. Provost Miller had been informed that a group was proceeding from White Plaza to the Computation Center. An estimated 100 to 200 demonstrators arrived at the Computation Center shortly after 1:00 p.m. There were apparently no previous collective decisions or explicit understandings by the group as to what actions were to be taken or as to whether to damage the computer. Some subgroups may have had previous understandings; different individuals testified as to different expectations. There were no plans for formal picketing with picket signs as in many "strikes," and there had been no attempt to communicate with Computation Center workers about a strike after the Dinkelspiel meeting of February 9.

At about 1:15 p.m., forcible entry was made into the Computation Center; the gate was scaled and the back door forced. About 50 demonstrators then entered through the back door. As they moved through the building, they opened other entrances and admitted other demonstrators. Power to the building and to the computer was shut off at 1:20 by pulling a master switch located near the back door. Some 100-200 more persons entered and milled about inside the Computation Center. Some demonstrators, according to officials of the Center jimmied the door and entered the machine room. They went to the 2301 drums, yanked out wires, and flipped switches behind gates or doors on two of the data storage drums. Other demonstrators in that group went directly to the racks where tape reels were stored and began looking through them. The telephone lines were made inoperative. Once demonstrators were inside the building and the doors were thrown open, the Stanford police did not try to stop movement in and out of the building. Some of the demonstrators posted themselves at the doors, and to some extent controlled entry and exit, for example, denying entry to a photographer.

During this period, there was a continual movement of demonstrators into and out of the Computation Center. It is agreed that some time during the occupation approximately \$800 of physical damage was done to the premises and contents of the Computation Center, not counting any costs of shutdown time on the computer. This damage was partly caused by the pulling of the wires and damage to the 2301 unit, partly to the premises. Two fire hoses were taken out of racks and valves opened, but the water had been turned off earlier by the University. The printout of each of three printers was removed. It is agreed that no substantial damage was done to the computer itself. However, the shutdown, lasting until about 8:00 p.m., made it impossible for the Computation Center to process 700-800 student and faculty jobs scheduled for that period. Montgomery testified that these jobs would be run during the succeeding two weeks.

Given the fact that the demonstrators illegally seized the Computation Center and made impossible continuation of its regular activities, the Board does not consider further details on the conduct of the occupiers important for Charge 9 against Professor Franklin. It should be noted that the occupiers refused to obey the requests to leave the building required by law—by Bruce Wiggins on behalf of Stanford University and by Officers Marron, Rosa and Tamm of the Santa Clara Sheriff's office. However, as a context for other events, we note briefly some undisputed facts concerning the occupation.

Professor Franklin met his 1:15 class. Only seven of the 150 registered students were present. He believed the others were at the Computation Center and suggested moving the class to the area outside the Center. Professor Franklin did not hold his class because he testified, many of his students were inside the Computation Center. It is uncontested that he remained outside the Computation Center, talking with individuals about a variety of topics prior to the arrival of the police.

Bruce Wiggins, Stanford Director of Public Safety, arrived at the Computation Center soon after its occupation. He walked through and around the building with Assistant Fire Chief Barr. Soon thereafter, around 2:00 p.m., he telephoned the Santa Clara Sheriff's office and told them of the occupation.

Shortly after 2:00 p.m., C. D. Marron of the Santa Clara Sheriff's office arrived at the Computation Center. He too walked through the building, and then went to Redwood Hall nearby to confer with Wiggins and others, including Messrs. Rosenzweig and Schwartz from the University administration Sergeant Tamm and Captain Rosa of the Santa Clara Sheriff's office, and an Assistant District Attorney of Santa Clara County.

At about 3:00 p.m., it was decided that Wiggins should return to the Computation Center and issue, in the name of Stanford University, a declaration of trespass, declaring the occupation a violation of Stanford University regulations and ordering the occupants to leave immediately. Wiggins used a bullhorn as he moved through the building making this declaration. Wiggins claims he was jostled, pushed and shoved; it is agreed that his announcement was greeted by jeers and catcalls, and that virtually no one left the building in response to his order. He then returned to the group at Redwood Hall.

At some point, probably after 3:00 p.m., an informal meeting was held by the demonstrators. It was chaired by Janet Weiss, near the door of the Computation Center, partly inside and partly outside the building. Although reports on this meeting are somewhat confused, apparently there was an informal discussion as to what to do, including whether to continue the occupation of the Computation Center, what to do if the po-

lice came, and whether to damage the computer. The discussion, according to Harry Press, a University witness, included talk about what would be the impact on student support if the computer were wrecked. Janet Weiss is reported to have stressed the political neutrality of machines, urging that they not be damaged. Apparently agreement was reached to stay in the Computation Center until the police came, and then to leave voluntarily without damaging the computer. Station KZSU, misunderstanding this vote, reported that the occupiers would damage the computer, but Janet Weiss asked them to broadcast a retraction of that report. There may have been other, smaller meetings of the occupiers during the afternoon; testimony on this question is confusing.

At about 4:00 p.m., the group in Redwood Hall decided that Messrs. Marron, Rosa, and Tamm would go back to the Computation Center and again try to persuade the occupants to leave voluntarily. They did so, asking what the occupants wanted, calling attention to the vulnerability of the computer and the data it contained, and to possible injury to persons in the University and in the hospital. The responses of the demonstrators were that the occupants wanted to get the Gamut-H program, SRI research, and war-related research out of the Computation Center; the precise nature of all the demands is unclear. Marron testified that there were scattered shouts of "Down with SRI" and "Get SRI out." Few if any of the occupiers left. The three officers returned to Redwood Hall.

After further discussion by the group in Redwood Hall, the three officers again returned to the Computation Center. The police announced to the occupants that they had been informed that the SRI work had been stopped at the Computation Center. Some demonstrators replied that such word was not good enough, and they wanted a written statement from President Lyman. After a brief discussion, the police said there was nothing more that could be done, and the three officers returned again to Redwood Hall.

2. Order to Disperse and Police Arrival. Police officers had been called and their arrival was imminent. Just before they were expected to arrive, Marron went out to the front steps of Redwood Hall, and, using a bullhorn, he made a formal statement declaring the occupation of the Center and its immediately adjacent territory unlawful and ordering the demonstrators to disperse, also stating that they were subject to arrest if they did not do so. It is uncontested that he made this announcement three times, pointing in three different directions, with one aimed directly at the people inside the Computation Center and the two others at the people in the area outside the Computation Center to his left and right. There was no response to these orders to disperse, although Professor Franklin's witness Litterman said he heard them.

Very soon thereafter, the police arrived and entered the Computation Center. Look-outs for the occupiers observed the police arrival and notified those inside, so that the occupiers left the building rapidly just as the police were entering from another direction. The police made no arrests in the building, although they indicated that they would have made arrests if the occupiers had remained in the building. Marron entered the building immediately after the police, continuing to declare the assembly an unlawful one, ordering dispersal, and threatening arrest for any who did not obey the order to disperse. Since the Computation Center had been cleared, he then went outside and walked clockwise around the building continuing to give his order to disperse. He continued his series of announcements and, by his testimony, returned to the front of the Computation Center about eight minutes

after the arrival of the police. A double line of police had been formed in front of the Center. Marron repeated his complete order at least three or four times in front of the Computation Center, stating that the area from the Computation Center to Jordan Way was to be cleared. Some demonstrators did not hear or did not know the extent of the prohibited area. Marron testified that ordering dispersal from a wide area was common police practice. He testified to his concern that the police officers under his command would be vulnerable to rock-throwing and possible injury if the demonstrators were permitted to stay close to the police lines and the building which had just been cleared. As long as a confrontation between demonstrators and police persisted, indefinite police presence would have been necessary to protect the building and computer.

As police lines were formed in front of the Computation Center and as Marron repeated his announcement, some clusters of demonstrators remained in front of the police line, perhaps six to ten feet away, chanting "Pigs off campus" and other slogans, and loudly questioning the legality of Marron's order to disperse. These demonstrators formed several clusters; they included a number of the "movement." Other demonstrators, faculty observers, students, and passersby were farther from the police line in two grassy areas and in the park lot; they were less active.

After leaving the Computation Center, the small clusters of demonstrators near the police lines made no movement to withdraw in response to Marron's repeated order. At first the more distant persons also did not withdraw. Professor Franklin, Marron, and other witnesses who were near the grassy areas testified, however, that the more distant crowd began to withdraw as the order to disperse was repeated. Professor Franklin, in his affidavit prepared shortly after the event, stated that he believed "most" of the crowd was beginning to move back; in his oral testimony at the hearing he stated that he now believes that a smaller number was beginning to move away—perhaps only more than half, or fewer. Marron, Moses, and Waterman, testifying for the University, and Professor Franklin's witness Owen Blank in a direct report to KZSU from the scene, all agreed that the portion of the crowd away from the police lines was definitely moving back in response to the repeated announcements to disperse. Most of Professor Franklin's witnesses, primarily individuals standing near the front portion of the grassy area nearest the Computation Center, testified that they did not see any significant part of the crowd moving back. This apparent contradiction in testimony is explainable, in part at least, by the fact that those witnesses who had reason to be observing the rear part of the crowd saw the movement away, while those who were focusing their attention on the police lines and events nearby did not see the movement of the rear portion of the crowd.

3. Professor Franklin's Role. At this stage, Professor Franklin moved forward and stood in front of a cluster of demonstrators who were loudly stating that the order to disperse was illegal. Some of Professor Franklin's close political associates were part of this cluster. They were giving a clenched fist salute while vociferously denouncing the police order. Professor Franklin, according to testimony and photographs, stood quietly in front of this active group and observed what was occurring. He then moved closer to Tamm, who was near the police line, and argued briefly and vigorously that the dispersal order was illegal and he had a right to remain as a faculty observer. Tamm disagreed on both points, pointing out that Franklin was not on the official list of faculty observers supplied by the President's Office. Professor Franklin then wheeled and

strode toward Dean Lincoln Moses. Moses was some 30-50 feet farther back, perhaps 40-60 feet from Tamm, and was beginning to leave in response to the police order. Professor Franklin called out, "Lincoln Moses!". Professor Franklin shouted some words like "God damn it, this happens every time the police charge. The faculty observers are all gone!" He argued loudly that Moses should not leave, that the order to disperse was improper, and that faculty observers, like Moses, should remain to observe possible police brutality. There is substantial agreement on what Professor Franklin said to Moses in this brief but loud set of statements. It is further agreed that Professor Franklin was heard by a nearby circle of 10 to 12 persons and by others farther away; although he was close to Moses, Professor Franklin was shouting his arguments. Professor Franklin testified that he was being careful while shouting at Moses not to use language in describing the police which would reduce the likelihood of his persuading Moses to stay. Professor Franklin's statements to Moses took about a minute and a half. Franklin then headed back toward the police line, some 40-60 feet away.

Witnesses for the University testified that Professor Franklin was shouting loudly as soon as he took his first steps back toward the police lines, angrily denouncing the police order as illegal. He made his way back to Tamm, some 50 feet distant, through the substantial group remaining in the first grassy area. The items of dispute are whether Professor Franklin was addressing his shouts to the police or to others in the crowd when he started shouting, and whether his shouts included exhortations that people not leave.

4. Testimony that Professor Franklin urged and incited the crowd to stay. Moses reports that at first he was convinced by Franklin's statement that he should stay as a faculty observer and started to follow Franklin back toward the police line. However, he goes on:

"He meanwhile continued talking. He turned his back to me and went toward the line, talking loudly and . . . waving his arms or gesticulating. . . . And as he went, a group of people formed about him and went with him. And whether he was addressing only them or generally all who could hear I would not say."

On cross-examination, Moses said:

"Then as you [Franklin] went on, you appeared to me to be encouraging as many people to come as would come. And that is what turned me around. . . . I felt that I was just being recruited to be one more person present. . . . I took the whole crowd to be provocative of the police."

Under further cross-examination by Professor Franklin, Moses reiterated this testimony and his statement that Professor Franklin was urging people around him to disobey the police order and return. Although he admitted it was "conceivable" that Professor Franklin's words were solely addressed to the police, he said that his understanding was clearly to the contrary.

Moses was asked by Professor Franklin on cross-examination whether Professor Franklin could not have been merely urging faculty observers to join him in going towards the police lines. Moses responded that Professor Franklin was not addressing his remarks to faculty members but to the entire crowd or all within the sound of his voice. Moses said, "You spoke to me about faculty people. And then as you went on you appeared to me to be encouraging as many people to come as would come. And that is what turned me around."

Waterman testified that before Franklin approached Moses, ". . . the crowd was definitely starting to drift back this way . . . in fact they were drifting back in appreciable numbers. . . . I definitely had the impression that the crisis was past, that people were leaving, and that the situation was about to calm down."

He then testified that he observed Franklin at this point crossing the grass in front of Redwood Hall toward the police, although Waterman was not sure whether before or after the Moses encounter, "... shouting to the crowd, telling them to come back, challenging the right of the sheriff's men to declare it an illegal assembly, and saying that they had a perfect right to hold a peaceful meeting and that they should return to do so. . . . He seemed to be shouting in general to the bunch that were leaving and had gotten about as far as the second grassy plot."

Broholm, reporting from the scene for KZSU, reported (a tape recording is available) first that "the crowd was definitely moving back"; and then that Professor Franklin "was haranguing the crowd to stay" and resist the order to disperse, and "was berating the crowd for leaving." On cross-examination by Professor Franklin, Broholm confirmed this on-the-scene report: "After you turned away from Moses you turned back in that direction and began yelling." And again, "You turned around, faced back toward the police . . . and you started yelling in that direction." It is important to note that Broholm placed the Moses-Franklin encounter and subsequent Franklin shouting near the edge of the crosswalk in front of Redwood Hall, at least 60 feet from Tamm and Marron. Under further cross-examination, Broholm said that he now doubts the accuracy of his on-the-scene report that Professor Franklin was "haranguing the crowd to stay," and that instead Professor Franklin was probably shouting at Tamm. He did not, however, change his estimate that Professor Franklin began shouting in an area some 60 feet from Tamm, who was separated from Professor Franklin by a substantial number of individuals in the first grassy area. We believe that Broholm's on-the-scene account can be presumed more accurate than his recollection eight months later.

Owen Blank, another KZSU announcer, also reported from the scene (recorded on tape) that the crowd in the grassy areas was moving away at first, and then turned and moved back toward the police line as Professor Franklin was shouting. As Professor Franklin's witness, Blank attached the accuracy of the taped reports by Broholm and Blank on Professor Franklin's role in reversing the crowd's dispersal, but Blank's testimony when related to the times on the taped reports instead confirms the on-the-scene reports by Broholm and Blank. Although Broholm and Blank apologized to Moses for errors in Broholm's reporting at the time, these errors concerned Moses's alleged assent to Professor Franklin's urgings, not Professor Franklin's own behavior.

Professor Edward Begle testified that he saw Professor Franklin apparently urging a group of young people to stay at the gathering, but it is not clear whether this was the group of people around Moses and the details of his testimony are not confirmed by others.

The witnesses who heard Professor Franklin's words testified that he, as he strode back towards Tamm, was angry and shouting, repeating the same arguments as before, that the order to disperse was illegal and the crowd should not leave. Moses', Waterman's and Broholm's testimony was cited above. Professor Franklin's witness Doering testified that "He [Professor Franklin] walked away from Moses a couple of paces, and I think he said some things on the way." Doering places the Moses encounter at about the group of birch trees furthest from the police lines, some 30-40 feet away.

As Professor Franklin returned to confront Tamm, an indefinite number of other persons moved along, beside, or behind him. In moving back toward Tamm, Professor Franklin moved through a substantial number of persons between Moses and Tamm. These included some of Professor Franklin's political associates (identified in pictures)

and others not identified. Thus, it seems certain that Professor Franklin's shouts against dispersal would be clearly heard by these persons, whether or not they were primarily addressed to Tamm, and that Professor Franklin must surely have known that they would be received by at least these demonstrators through whom he advanced, whether or not they were heard by persons behind Moses and Professor Franklin in the second grassy area.

5. *Testimony that Professor Franklin Did Not Urge and Incite the Crowd to Stay.* On the other hand, Professor Franklin and many of his witnesses testified that Professor Franklin spoke only to Moses when he strode from Tamm to Moses, and that he spoke only to Tamm when he turned from Moses back toward the police line. They described his comments to both as not intended to incite other people to disobey the police order. One of his witnesses, photographer Harrison, described both the scene and Professor Franklin's following confrontation with Tamm as tranquil. Another witness, Professor Switzer, described the atmosphere as a "picnic." But these evaluations are specifically controverted by pictures, tapes and other testimony. Nearly all, including Professor Charles Stein who was near Moses, deny hearing Professor Franklin directly address anyone other than Moses or Tamm. Most of Professor Franklin's witnesses testified that they did not hear, or did not remember, what Professor Franklin was saying as he strode forward, until he was close to Tamm (e.g., Pace, Lonsdale, Hunkeler). They report that they heard him shout only as he neared Tamm, and then only at Tamm. This, however, is not inconsistent with Moses', Waterman's and Broholm's testimony that Professor Franklin was shouting earlier when much farther from the police. Most of Professor Franklin's witnesses were nearer the police line, mainly facing the police, and hence did not observe Professor Franklin's entire movement forward. But Doering did, and testified that Professor Franklin spoke as soon as he left Moses. Hunkeler did not have Professor Franklin under constant scrutiny and could hear only a few words.

Professor Franklin testified that he began to shout at Tamm from a distance because he wanted to be sure that Tamm understood why he was returning to the police line and that his action was intended to be conciliatory and to lessen the danger of a police charge and arrests of the demonstrators there. But that he should have done so at such a great distance seems highly implausible under the circumstances, and conflicts with considerable testimony from witnesses from both parties. Clearly, Professor Franklin did, as he stated, address Tamm, saying, "Don, this is ridiculous . . ." as he approached Tamm and Marron, apparently from a distance of five to ten feet; this is confirmed by his witnesses who were near the police line.

With one exception, Professor Franklin's own witnesses did not support his version of events as he left Moses. The only witness for Professor Franklin who gave evidence contradictory to that of the University witnesses was Downey, who testified that, although he was not sure, Professor Franklin was not saying anything as he left Moses and walked towards the police lines. It is likely that Downey was confused about the timing of his interaction with Professor Franklin. Downey testified that he never was with Professor Franklin until after the encounter with Moses, but pictures show Downey standing with Professor Franklin and the group shouting at the police at a time identified by Professor Franklin's witnesses as prior to his words with Moses. With this doubtful exception, Professor Franklin produced no witness who contradicted the testimony of Administration witnesses who observed his

shouting as he left Moses at a considerable distance from the police lines.

Professor Franklin was apparently himself confused as to the focus of his confrontation with Moses in relation to the police lines, and, in his testimony, he minimized the distance from the police lines. He testified that he was only a few steps away from Tamm when he turned away from Moses.

One witness for Professor Franklin, Stein, supported this spatial image by testifying that Professor Franklin was about 15 feet from the police lines. No other witness for either party supported Professor Franklin on this point; indeed, five witnesses for Professor Franklin directly contradicted him in their testimony.

6. *Franklin-Tamm Confrontation and Police Charge.* It is agreed, and supported by photographic evidence, that after Professor Franklin approached Tamm, a substantial number of people, approximately 30, closed in around and behind Professor Franklin as he angrily confronted Tamm. Professor Franklin testified that he was aware of people moving in from both sides but he didn't know how many newsmen were present. Some witnesses, including Professor Franklin's witness, Litterman, testified that the crowd threatened to engulf the police officers and Professor Franklin. Professor Franklin and Tamm stood face to face shouting angrily at one another. Witnesses of both parties described the situation as very tense. Professor Franklin was repeating his basic arguments and Tamm was denying the validity of both.

After a very short interval, two, perhaps more, policemen moved rapidly from behind Tamm and Marron to try to arrest Professor Franklin, but Professor Franklin slipped away from them, perhaps with the help of some of his friends. At almost exactly the same time the police line moved forward on the demonstrators in what is commonly called a "police charge."

We note, parenthetically, that we do not consider Professor Franklin's acknowledged urging of Moses and other faculty observers to stay to be objectionable under the charge. Formally designated faculty observers were asked by the University administration to be present, even though some, not identified to the police, were apparently struck during the charge. The presence of faculty observers could have been expressed to reduce the risk of injury to persons.

7. *Findings of Fact.* The Board finds the evidence strongly persuasive that: (a) the police order to disperse was clearly reasonable, given the illegal seizure of the Computation Center, possible serious damage to the computer and data stored there, possible danger to police and demonstrators outside after the building was cleared, and the need to return the Center promptly to normal action without police presence; (b) while some demonstrators refused to disperse after the building was cleared, a substantial portion of the crowd was moving back in response to repeated police orders, prior to Professor Franklin's intervention; (c) Professor Franklin played a central role in reversing the movement of the crowd to disperse and his shouts and behavior significantly increased the likelihood that a substantial number of those present would stay; (d) Professor Franklin intended his shouts after leaving Moses to be heard by, and to influence the crowd to remain at the scene in defiance of the police order to disperse. However, even if he did not directly address his shouts to the crowd, he must reasonably have expected that a result of his shouts would be to incite members of the crowd to disobey the dispersal order, increasing the risk to themselves; Professor Franklin's conduct and shouts cannot reasonably be interpreted as merely attempts to persuade Moses and other faculty observers to stay, to conciliate the police charge or arrests with their attendant dangers to the demon-

strators. We comment further on these findings in the following section.

C. Supplementary evidence and findings

A number of points in the testimony require special attention in order to amplify and interpret the findings of fact indicated above.

1. *Charge of University Negligence.* Professor Franklin suggests that the University administration was negligent in not announcing to the occupiers of the Computation Center that work on the disputed SRI contract had, in fact, been halted one or more days before, because this information might have been sufficient to induce the occupiers to leave the Computation Center peacefully. Alternatively, he implies that had some official of the University explained that an investigation was under way, this might have induced the occupiers to leave the building voluntarily without the police having to be called.

In fact, SRI had apparently stopped using the computer for the GAMUT-H and its other programs prior to February 10, but it had not informed Stanford of any policy decision regarding GAMUT-H or other SRI projects on the Stanford computer. The SRI accounts had not been cancelled. Moreover, the Stanford administration at that time believed, on the information received from SRI, that there was no violation of University policy; SRI had indicated to the University administration that the research in question was not classified and was available for publication. Thus Provost Miller testified that he did not believe it would be proper for the University to issue any statement pending receipt of information on SRI's position on the whole matter. Moreover, the Computer Facilities Committee of the University was meeting on the afternoon of February 10, during the occupation, precisely to discuss the issues raised by the GAMUT-H program.

We do not agree with Professor Franklin's argument that the University administration's refusal to negotiate with, or report to, the Computation Center occupiers justifies the refusal of the demonstrators to leave the Computation Center which they were illegally occupying. Some persons believe the University administration would have been well advised to issue a public statement that it was investigating the whole situation, although we find the University administration's position on the matter easy to understand, given the uncertainty about SRI's position and the fact that the relevant University committee was in fact meeting at 2 p.m. on the afternoon of the occupation. But even if the University officials involved were guilty of faulty administrative judgment, this would in no way justify the illegal occupation of the Computation Center and its continuance in the face of both University and police orders to disperse. Moreover, it is important to remember that the protestors had made no direct effort vis-a-vis the administration to halt the GAMUT-H work beyond one unsigned leaflet, although they had, according to their own testimony, known of it for at least a week or two; the Computation Center sit-in was in no sense a "last resort" step after all legal avenues were exhausted. The demands of the occupiers were vague, and we see no reason to believe that they would have left the Center merely on notification by the administration that the problem was under active investigation.

2. *Argument that Police Order to Disperse was Unreasonable and Illegal.* Professor Franklin argues that the police order to disperse was unreasonable and unlawful—that the crowd outside the Computation Center was peaceful and within its rights of free assembly as guaranteed by the First Amendment to the Constitution. Thus, not only was he within his constitutional rights in refus-

ing to disperse and urging others not to disperse, but indeed he was following his duty as a citizen and a professor in so acting.

California law clearly gives to police the authority to disperse illegal assemblies and sets out the legal requirements for such orders. Only a court of law, which we are not, could finally determine whether in fact the police declaration of illegal assembly and the order to disperse in this instance was legal. In our judgment, the police order to disperse was clearly reasonable and, as we understand the law, was probably legal as well. An illegal seizure of the Computation Center had occurred, and both University and police officials were understandably concerned lest serious damage be done to the valuable equipment housed there and to the even more valuable data stored there. It was widely known that major damage to computers, totalling millions of dollars, had been done to other university computers.

The order declaring the occupation of the Computation Center an illegal assembly and ordering dispersal was a single order aimed at the occupiers of the Computation Center when they were inside the building and at those participating in the demonstration outside the building, both before and following its evacuation. Maroon's testimony on this point is clear, and it is confirmed by one of Professor Franklin's witnesses. He began giving the complete order before the arrival of the police and continued with the same order during the evacuation of the Computation Center and following the evacuation when part of the demonstrators stayed close to the Computation Center building. That this order to evacuate the building was fully warranted can hardly be denied. It was that same order that insisted that the demonstrators withdraw a substantial distance from the building being evacuated.

Moreover, we conclude that the order to disperse back to Jordan Way outside the building was reasonable on its own merits as well. The police knew that violence had occurred on the Stanford campus during police-demonstrator confrontations several times during the past few years, the precaution of moving the crowd back a substantial distance from the police line was understandable, and was probably calculated to lessen injury to both the police and the demonstrators. Thus we conclude that the police order declaring the demonstration an illegal assembly and ordering dispersal was clearly reasonable in these circumstances.

Professor Franklin may have had the right as a citizen briefly to protest the police order which he believed unreasonable. But, especially given the strongly negative police response to his first protest which he himself noted, he surely did not have the right to increase the risk of injury to others by urging them to stay and disobey the police order.

3. *Argument that Professor Franklin's Action was Aimed at Conciliation and Reducing Danger to Those Present.* Professor Franklin argues that his action outside the Computation Center was aimed primarily at protecting demonstrators from injury or arrest at the hands of the police—that his argument with faculty observers (and others) to remain and with the police against the legality of the dispersal order was aimed at avoiding such danger to the demonstrators. Some of his witnesses testified that in their judgment Professor Franklin's purpose was conciliation and avoidance of danger to the demonstrators.

We find it plausible that Professor Franklin may have believed that he was acting to protect the rights of his friends and co-workers in the "movement" in some of his actions. It is clear that those in the small group clustered in front of the police line as the larger group of demonstrators moved back were largely members of the "movement," including several of its best known participants. It thus became increasingly

likely that these individuals would be in the forefront of a police charge and most likely to be arrested if, in fact, a charge did occur. That Professor Franklin should endeavor to prevent the isolation of these individuals from the rest of the group of demonstrators and passersby is understandable.

But that he believed that his actions were basically conciliatory and aimed primarily at lessening the likelihood of a police charge and arrest is difficult to accept. His behavior was surely encouraging other people to remain at greatly increased risks to themselves. Shouting loudly and angrily at either faculty observers, the police, or others in the crowd is hardly calculated to calm crowd or police behavior, or to lessen the likelihood of violence. Thus, Professor Franklin's loud shouts as he turned from Moses some 40-60 feet from the police could hardly have been calculated to calm the situation. He apparently addressed Tamm by name only after he had approached within 10 feet or so of the police; surely he would have done so sooner had his main goal been to persuade Tamm, and he would not have shouted to the crowd upon turning away from Moses. Professor Franklin described Tamm during the second confrontation as "more immediately hostile than I had ever seen him before." Moreover, Professor Franklin himself testified that he knew "for a certainty" that a police charge or arrest would occur under such conditions once the police line-up occurred and the order to disperse was read. He testified that he knew of no case where such a situation was not followed by a police charge or arrests. On his own testimony, he had these points in mind prior to his discussion with Moses and his shouting return to confront Tamm. Several of Professor Franklin's witnesses testified that they too thought a police charge to be highly likely or inevitable, and became even surer when they saw Professor Franklin striding back to confront Tamm the second time. Given this testimony, it is difficult to accept the argument that Professor Franklin seriously hoped by his actions to eliminate the possibility of either a police charge or arrests outside the Computation Center.

It is difficult to believe that Professor Franklin's duty as a professor encompassed using others to stay and confront the police when he felt certain that the result would be a police charge and arrests, with a danger of serious personal injury (which he testified is likely whenever a police charge occurs). He testified that he personally was resolved not to give way to fascism and was going to stay and confront the police no matter what happened. He testified, as did several of his witnesses, that dispersal would be a political defeat for the "movement" and an important victory for the police.

Although Professor Franklin felt certain, or almost certain, that a police charge and arrest would ensue soon, he did not advise any people in the demonstrator's group, either those in the "movement" or other students, of the danger of a police charge, possible injury, and arrests. Professor Franklin and some of his close political associates testified of their awareness of the impending police action at a time when others, less experienced, did not anticipate any trouble. Professor Franklin testified:

"My own experience in having been in just lots and lots of police confrontations, is that if an order is given declaring something an illegal assembly, telling people to disperse, once that takes place then there are basically one of two things that are going to happen. Either the pigs are going to charge the people or they're going to move for a mass bust."

"I don't think I've ever seen a declaration of an illegal assembly—maybe I have but I certainly can't remember—I've never seen a declaration of an illegal assembly not followed by one of those two actions. Now it can be seconds; it can be minutes. Sometimes they can declare an area an illegal assembly and then

nothing happens for some period of time and they're moving what's really happening is they're moving in for a mass bust. . . .

"And one of the signs you look for in a police line prior to a charge is whether—one thing is the visors. The other thing is whether they're smoking or not. If they're not smoking then you look upon that as, you know, a charge could take place at any time. And of course, one of the things that they try to do is to make the charge unexpected. So once you've got in a situation the charge could take place the next second or it might not take place for some time, but something is going to happen."

Professor Franklin had difficulty explaining his failure to warn others. He testified:

"As far as the question of whether I talked to demonstrators on the lawn of the computer center about the possibility of arrests and beatings and so forth: I just—I mean, I may have had—it's possible that I talked to some people about something about it. But I certainly don't remember that at all, any more than I remember. . . . Well, I'm sure that I didn't urge anybody to stay and I'm sure I didn't urge anybody to leave, if that's what—if that's what the point of that question was."

4. Did Professor Franklin Intentionally Urge and Incite People to Remain in Defiance of the Police Order to Disperse? The charge states that "Professor Franklin significantly interfered with orderly dispersal by intentionally urging and inciting students and other persons present at the Computation Center to disregard or disobey such orders to disperse." The evidence seems to us convincing that the result of Professor Franklin's behavior was to help significantly to induce students and other persons present at the Computation Center to disregard or disobey such orders to disperse. But Professor Franklin argues that he did not specifically address any individual other than Moses and Tamm. He said, "I wouldn't take it upon myself to do that to people in that situation because I knew that people were defenseless in that situation." No witness testified that Professor Franklin directly addressed other specific individuals, although there is considerable testimony that he addressed the crowd in more general terms, urging it to resist the allegedly illegal police order to disperse. The question is whether these shouts and this behavior, not addressed to specific individuals other than Moses and Tamm, amount to intentionally urging and inciting students and other persons to disregard the police order.

We find the evidence strongly persuasive that Professor Franklin intentionally urged and incited students and others present to disregard or disobey the police orders. His purpose was to encourage others to remain. Except for his own denial, all percipient witnesses testified that Professor Franklin, after leaving Moses, directly addressed his shouts to the crowd. But even if he did not directly address the crowd, he must have expected the likely effect of his behavior under those circumstances to be to urge and incite others to stay. Professor Franklin surely would not need to have addressed each individual by name to have urged them to stay.

The conclusion that the incitement was intentional is reinforced by Professor Franklin's testimony that, even knowing the results of his actions, he would not have changed his behavior outside the Computation Center. He said, "The only reasonable course of action that I could see was what I did. And in looking back on it now from, I don't know, eight or nine months, I still can't see any other alternative."

The charge is not that Professor Franklin disobeyed the police order himself, but that he intentionally incited others to disobey the order. His behavior increased the risk to others, a risk of which many were unaware.

The evidence meets the standards for incitement that we set out earlier.

Conclusion: We find the evidence strongly persuasive that Professor Franklin did significantly interfere with orderly dispersal following the clearing of the Computation Center by intentionally urging and inciting students and other persons present to disregard or disobey such orders to disperse, that this police order to disperse was clearly reasonable under the circumstances, and that Professor Franklin's conduct and speech did substantially increase the danger of injury to other persons.

Dissenting opinion

Professors Brown and Kennedy, although in accord with much of the descriptive account of the majority report on the events outside the Computation Center, dissent as follows:

We place a sufficiently different interpretive weight on the evidence at certain crucial points to make us unable to sustain the charge.

1. The first of these centers on an element of Professor Franklin's conduct that is central in the testimony of virtually every witness, his concern that faculty members remain as observers—a concern without which many of his actions remain inexplicable. This is a major substantive point in the conversations with Tamm and Moses, it persuades Professor Eklof to stay on the scene when he had decided to leave and persuades Professor Moses in retrospect that perhaps he should have stayed, it is a subject Professor Franklin pursues with Professor Hastorf after the police charge, and it is the dominant concern in Professor Franklin's later conversation with Litterman and in a speech in front of President Lyman's office. He asserts that he felt (a) that the continuing presence of faculty observers might avert a police charge, (b) that "respectable" faculty like Moses might help him persuade the police of the right of people to remain, and (c) that if there were a charge, the faculty presence might minimize its brutality. He testified that he felt a police charge would be "inevitable" if there was a "withdrawal of the faculty observers and other kinds of neutral people who had made up a significant section of that crowd."

We agree with the majority report that "the presence of faculty observers could have been expected to reduce the risk of injury to persons." However, that fact, coupled with Professor Franklin's own concern to keep faculty observers on the scene, cause us to dissent from the majority conclusion: "that he believed his actions were basically conciliatory and aimed primarily at lessening the likelihood of a police charge and arrest is difficult to accept." We find the conclusion plausible rather than difficult even though we believe that Professor Franklin's manner of seeking this end was unwise.

2. A second difference of interpretation involves fact more than motivation, and we find the call a close one either way. This concerns the crucial period between the time Professor Franklin leaves Moses and the time he is back in conversation with Tamm, some 40 to 60 feet away. His own witnesses state that he was shouting loudly during these moments, but assert, along with him, that the comments were addressed only to Moses and Tamm. The majority report believes that in addition he spoke directly to others, and that, even if he had not, his voice and demeanor were such that others would inevitably hear him, and that he should have known that his words and actions would influence them not to disperse. Broholm and Blank are no longer completely sure that Professor Franklin was directly haranguing the crowd, although that was their on-the-spot impression. Moses believes he was, though his assessment is predicated on action after Professor Franklin turned his back on him, so

that the direction of the shouts is only conjecture. Waterman believes Professor Franklin was directly enlisting crowd support, but his timing of the event is uncertain, and he saw only Professor Franklin's back and left side. The identity of his audience is thus once again conjecture. It is clear, however, that by the time Professor Franklin was within ten feet of Tamm he was yelling directly at him such words as, "Hey Don, this is ridiculous. . . ." In the interval he was apparently asserting "that it was not an illegal assembly, and that people should stay," though no witness produced unshakable testimony that he shouted this directly at individuals within the crowd.

The possible reconstructions not all mutually exclusive, are (a) that he spoke directly to Moses and Tamm, but that he was overheard by others, some of whom responded to his exhortations, (b) that he was directly urging members of the crowd to stay, or (c) that he was expressing his disgust and anger at the police order either to the heavens or to onlookers in general, rather than as specific instructions to members of the crowd. There is clear evidence for the alternative, evidence (though less persuasive) for the second, and plausibility for the third. The weight one puts on such alternative explanations, and the interpretation one makes of Professor Franklin's actions during these moments, is dependent on a third consideration.

3. The third matter involves an element in Professor Franklin's conduct that, like the first, appears in the testimony of virtually every witness: his strongly stated conviction that the police order to disperse was illegal. This is the second substantive point of his conversations with both Moses and Tamm. We accept the majority opinion that it is beyond our province or expertise to determine whether or not the order was legal, and with the majority "we conclude that the police order declaring this demonstration an illegal assembly and ordering dispersal was clearly reasonable in these circumstances."

However, if a citizen wishes to question a police order he believes unreasonable and unlawful, he has the right to do so for a limited period of time. We place great weight on this right, and believe that at least in part Professor Franklin was trying to assert it: he believed the order to be both unreasonable and unlawful, and so he exercised the right of a citizen to object to it, in a brief initial dispute with Tamm, in the attempt to enlist Moses, and then in the second heated exchange with Tamm. The elapsed time of these three conversations was probably no more than three or four minutes. To Professor Franklin, standing on the grassy area where all witnesses agree that they had seen no illegal acts, the order to disperse may have seemed patently unreasonable. That the Board in hindsight does not share this assessment does not diminish the right of Professor Franklin to have held it at the time or to have acted upon it, for a reasonable length of time, in the name of the right of peaceable assembly. The fact that the mood of the crowd immediately following the evacuation of the Computation Center was reasonably calm and may have caused no immediate danger to the police or the building gives added legitimacy to the right, under such conditions, to make a brief protest against the order, and even to seek faculty help in so doing. That Professor Franklin tried to enlist the aid of Professor Moses in his exercise of this right is looked upon by no member of the Board as culpable. It is even arguable that Professor Franklin, if he did indeed urge "student and others" to remain, was not engaging in culpable action, but only reminding them of their own rights as citizens to protest, at least briefly, an order that might be considered unlawful or unreasonable.

4. The accumulation of the above con-

siderations leads us to believe (a) that Professor Franklin tried to get other faculty members to remain on the scene in order to reduce the likelihood of a police charge, (b) that his continuing argument about the order to disperse was an attempt to protest a police decision he felt to be illegal, and one which as a citizen he had a right to protest, at least briefly, and (c) that these two strongly held convictions, uncontested in the testimony, led him to loud and angry shouting, clearly directed at Moses and Tamm, and possibly though not so clearly directed at others, centering on the need for faculty observers to stay, and the right of others to stay. The University's Supplementary Written Brief states, "The issue is whether a faculty member in a situation laden with the risk of violent confrontation between demonstrators and the police is acting properly when by his conduct he increases that risk." We conclude that, even if one accepts this as a statement of "the issue" such a description does not adequately match the conduct charged, and that there is not in our views strongly persuasive evidence that his words or actions constituted an incitement. Consequently, the charge that "Professor Franklin did significantly interfere with orderly dispersal by intentionally urging and inciting students and other persons present at the Computation Center to disregard or disobey such orders to disperse" is not one that we can sustain.

FINDINGS OF FACT: OLD UNION COURTYARD RALLY

A. Charges

The University Administration's charge concerning Professor Franklin's conduct during the Old Union Courtyard rally on February 10th reads as follows:

10. On the evening of February 10, 1971, beginning at approximately 8:00 p.m., a rally was held in the Old Union Courtyard to, among other things, discuss methods of protesting developments in the war in Indochina. Over two hundred students and other persons attended the rally. The course of the rally Professor Franklin intentionally urged and incited students and other persons present to engage in conduct calculated to disrupt activities of the University and of members of the University community and property. Shortly thereafter students and other persons were assaulted by persons present at the rally, and later that evening other acts of violence occurred.

B. Nature of the charge in paragraph 10

The charge centers on intentional incitement that threatened: (1) disruption of University activities, both individual and institutional; and (2) injury to persons and property. It implies that a rash of coercive or violent behavior existed at the time of the rally and that Professor Franklin further increased the risk by the content and manner of his participation. In determining whether the facts fit the charges, the Board must inquire (1) What is the entire context surrounding the alleged incitement? (2) What is being communicated to the audience? (3) What would the speaker judge to be the effect of his communications on the audience?

C. Findings of fact

Prominent Themes in the Old Union Rally, February 10

On Wednesday, February 10 at 8:00 p.m. about 350 people attended a rally in the Old Union Courtyard. Speakers debated tactics and demands. Professor Franklin spoke twice. The themes that emerged prominently in the course of the rally may be summarized as follows:

a. There was general agreement on opposition to the war in Southeast Asia and a wish to protest against American involvement.

b. There was a major difference of opinion on the scope of demands and of tactics. A contingent of students from Roble Hall fa-

vored a single demand, an effort to reach out for the broadest possible support and strict adherence to non-violent tactics. Another and larger faction favored a broader set of demands, even at the risk of losing community support; and they favored a broader range of tactics, including coercive and violent ones, depending on circumstances. This distinction between the two groups was not only apparent in the speeches, but was emphasized by a KZSU broadcast interview with representatives of the Roble contingent near the end of the rally.

c. Five speakers emphasized Stanford's major war complicity and severe political repression. This viewpoint may be illustrated with the following quotation from one of the speakers.

"I work at the phone company and I realize that everyday one out of every two calls that I place goes from Stanford University or SRI directly to the Pentagon, to SRI all over the country and all over the world, and people realize that Stanford University is integrally linked with Pacific Telephone Company, that all the business, you know, that the whole service which Pacific Telephone puts out is for the benefit of the financial interest in this area and people who are against the war, people that I work with who are against the war, who are very, very angry and outraged by the expansion of the war into Laos realize that, because they have brothers, brothers and uncles and fathers who are over there fighting, who have been forced to go over there, they don't have any choice, they can't afford to go to school, they are forced to be over there. They have brothers and sisters who are locked up in the prisons all over America and they realize that Stanford University, that the kind of research Stanford does, the kind of money Stanford has, which controls the black and brown communities in the mid-peninsula, is a very dangerous thing and they're willing to fight against that for their very survival and I think that the people here should respect that, should respect the fact that telephone workers are getting organized, that we're thinking now about what kind of support demonstration we can have when Stanford gets itself together and the issues become clear to the people that Stanford University is key in the war, key in the oppression of political prisoners and it's just got to go." [Applause.]

d. Eight speakers were very hostile to the police—especially to their presence on campus. Police had been called to the campus to terminate the occupation of the Computation Center and had remained in view of the likelihood of further illegal acts. It will be recalled that arson and "trashing" had occurred on the nights of February 6 and 7. Early in the Old Union rally of February 10, the presence of police on campus was announced. No witness testified that a single uniformed policeman entered the Old Union courtyard, despite the fact that Professor Franklin, in his affidavit shortly after the event, said there were many police there. In the hearing, he corrected this error. Thus, the police were not visible to the people at the rally, but their presence on campus was a focus of deep resentment. They were often referred to as "pigs" and as an occupation army or occupying forces. In conjunction with the previous criticism of Stanford's complicity in the war, the struggle on campus and the struggle in Southeast Asia were portrayed as different facets of a single struggle. Parallels were drawn between the police on campus and imperialist armies in Asia. The all-one-war theme was emphasized by urging resistance to the police as analogous to resistance to occupying forces on Vietnam.

e. On two occasions, members of the Free Campus Movement were pointed out in a context of hostility, and were linked to the police on campus.

f. In response to these various instigations,

there was a desire for action—not merely verbal demands, but concrete, tangible steps to implement them. There was a clear preference for strong, vivid action, though some speakers, including those from the Roble contingent, put their main emphasis on education. Little reference was made to "strike" in this rally. The actions mainly preferred by the speakers may be illustrated by the following remarks by the chairman:

"Okay, I think it's still pretty clear that we want to keep the demands as they are. Okay, at this point I think we should go on to specific proposals for how we act now. We've had a few proposals; one guy suggested that after the Comp Center thing today that in order to escalate rather than de-escalate we should zero in on SRI. Another person, other people have proposed that we deal now with the police state that's on this campus because if we're going to move against the war, one of the things we have to do to be able to move against the war in atmosphere where we're not intimidated by pigs coming through to surround our meetings and that kind of thing and that one of the ways to do that is to begin any kind of action people want to take to get the pigs off this campus. I think that people should speak to these proposals and add more proposals that they have."

g. Five speakers explicitly expressed and several others implicitly expressed anger, using words and imagery of fighting. Three speakers suggested actions to embarrass, humiliate, or confront the police, particularly late at night, while others made more general comments advocating resistance to intimidation.

h. Two speakers favored off-campus protests.

2. Professor Franklin's First Speech at Old Union (Second speech of February 10)

Professor Franklin's first Old Union speech (Appendix III) began with an effort to persuade the Roble contingent of the correctness of the majority position favoring a broad set of demands, including the freeing of all "political prisoners" and the end of Stanford's complicity in the war—not merely immediate withdrawal of US forces from Southeast Asia. He spoke with concern about people who must spend time in jail, emphasized solidarity within the "movement", and opposed betrayal of political prisoners. Then, in an intense delivery, he said:

And we get very upset when we find our beautiful campus crawling with pigs who stop and harass people and trip off and beat half of the people. Well this is just a very, very mild taste of what life is like in the black and brown communities of this country where the pigs come by every night and if you're young and you're black and brown they stop you and ask your I.D. and rip you off for suspicion of burglary and where there are dogs there and where there's helicopter overhead and that's part of the same struggle, and where they shoot you and the pigs who are here tonight, that's those San Jose pigs have just murdered a black brother in San Jose, the same San Jose pig just murdered a black brother down in San Jose and that's normal life down there. People murdered in the streets and that's why we call them pigs. Although it's a little unfair to the four-footed variety, because they don't do that kind of things." [Applause]

Continuing to speak in the same delivery, he next alluded to the Black Panther party's leadership and made the following remarks:

"And the Black Panther Party teaches us that the people of Laos and the people of South Vietnam are not another separate nation state. That they are our brothers and sisters because they are just other oppressed communities of the same empire. The Black Panther Party teaches us that today while this meeting was going on brothers and sisters, blood brothers and sisters of us, were killed in Laos, in Vietnam and Cambodia, in

the black and brown communities of the United States of America. They teach us this is all one struggle and the interconnections are every place. Ever if you think about what Laos is all about; what is the chief cash export of Laos, who knows?" [crowd] Opium, heroin?

"Opium, all the heroin on this coast comes from Laos. And it's all brought in by the CIA. It is grown and harvested by Meo tribesmen and flown out on Air America, the VIA airline. And it is brought in to this state as part of the oppression, particularly of black and brown people here, but also of white youth... (brief KZSU interruption)... and is just as much a part of the counter-insurgency system as the pigs are war on the campus."

He urged that others be taught about such evils as Stanford's complicity in the war and the necessity to free all political prisoners. He expressed the view that the student strike a year earlier had been a success. He closed by restating the necessity to continue the struggle to win others to his viewpoint.

3. Professor Franklin's Second Speech at the Old Union (Third speech of February 10)

This speech lasted about two minutes, but because KZSU was conducting an interview at the time it can only be heard in the background on the tape recording. The pitch of his voice is high, with only a few of his words and intermittent responses from the crowd being clearly discernible on the tape. The crowd responses increase toward the end. The content of the speech can only be reconstructed from testimony, but this poses little difficulty. There is substantial agreement as to what Professor Franklin said among his witnesses, the University Administration's witnesses, and Professor Franklin's own affidavit and testimony. The differences, as might be expected, are in the interpretation of his speech.

a. Professor Franklin's interpretation of his second Old Union speech.

In his affidavit he describes the speech as follows:

"A number of speakers at the meeting rose to describe specific instances of police harassment and brutality. Several proposed that we go to the dormitories to discuss the police state on campus and what to do about it, as well as what to do about the situation in Southeast Asia. One speaker said that many squads of six to eight police were roaming the campus, and that if we marched to the dorms some of these squads would follow us, and that it would be a good education for people in the dorms to see them. Two speakers said that the police were attempting to keep people from knowing what was happening, and that they had temporarily confiscated a walkie-talkie from a KZSU reporter and threatened to arrest him for listening to police frequencies. Another speaker said that if we march in one group it will be too easy for the police and we should confuse them by dividing into many groups. Another speaker said 'there are pigs all over this campus and we have to show people who the pigs are and who the people are, and we cannot tolerate a police state here or any place else.'"

"It was generally agreed that we would go back to the dormitories to build support for the strike and to raise consciousness about the police occupation of the campus. I rose to speak again. I said that it was unfortunate that the people from Roble had not felt that they were really part of the movement and that it was necessary to go into the dorms and discuss all their questions further. I said that it was very important for people to understand that this is a united front, and that people will respond on different levels of action and with different degrees of consciousness to the war. I said that it was important for people to accept these different levels, and that if people are sincere it is correct for them to do their own thing, to do whatever they think best, and that that is how all of us learn. I pointed out

that with the police saturation on campus, however, it would be suicide for people to engage in any militant action in a large group. I said that we must learn from the people of Southeast Asia that when confronted with an occupation army, we must respond with the methods of people's war. Then I explained that this means thoroughly merging with the people. I gave one and only one example of what I mean by this. I said that I had been told that a few nights before, during a similar police occupation, several people had begun a game of touch football. They moved from place to place on the campus, forcing the police to follow them. Several police complained to them that they were supposed to be in fixed positions, and that this was preventing them from maintaining those positions. Finally, when the football game approached the area of the computation center, the police had asked to examine the football. I said that I wasn't sure whether this was because they thought it was a bomb or because they just wanted to examine a real pigskin. I ended by telling people that people's war meant that they should go back to the dormitories, organize people into small groups, and talk with them, or play football, or whatever, as late into the night as possible.

b. Hearing witnesses' interpretation of Professor Franklin's second Old Union Speech.

(1) Administration witnesses—There is considerable agreement among administration and defense witnesses on the content (though not on the interpretation) of this speech. This can be illustrated by comparing Professor Franklin's version of his speech after the event given above with testimony of Robert Beyers, of the Stanford News Service. He testified that he had attended many rallies at Stanford over a period of years, and had often heard Professor Franklin speak. He described Professor Franklin's speech on this occasion as very critical of the police. He testified that Professor Franklin called specifically for people's war against the occupation army—i.e., the police. Professor Franklin suggested that people go back to their dormitories, meet in small groups, decide to do whatever they wanted to do as late at night as possible so as to bring more police onto the campus to help out their brethren in other communities. At this point, in Beyers' view, the nature of the meeting changed dramatically, leading him to expect that illegal or disruptive incidents would follow. Immediately after the speech, the rally ended and Beyers said three FCM students were badly beaten by some of the Old Union crowd. Under cross-examination, he indicated that Professor Franklin did not specify the exact nature of the violent acts to be carried out.

Brimelow felt there was much tension and restlessness in the meeting, and that the crowd got very excited as a result of the speech. After the speech he saw the crowd stream off in all directions and he heard "war cries" (something of this sort is audible on the tape recording). Almas heard the speech from the balcony of the Women's Clubhouse, thought it was impassioned and was startled by it. Almas had heard Professor Franklin speak about a dozen times but had never heard him encourage this level of action. Almas felt Professor Franklin had not been as careful as usual, and the witness had the expectation that there was going to be violence.

R. Jacobs, also on the balcony, thought Professor Franklin had made inflammatory statements. Gray felt Professor Franklin was playing the role of a leader giving instructions to the group in a serious vein.

(2) Professor Franklin's witnesses: Witnesses for Professor Franklin heard phrases similar to those reported by Administration witnesses but to some extent interpreted them differently. This is well illustrated by

an affidavit of Bennion, who also testified at the hearing.

"It became clear that there was some opposition forming, basically between going back into the dorms for further discussion and staying in the area the police were patrolling in order to show them that the occupation of the campus would not be tolerated. At this point Professor Franklin spoke and tried to explain that these two tendencies were not really opposed, but could be carried out at the same time and could mutually serve each other. He discussed at length the tenets of 'people's war' which is based on the concept of a united front. In essence this means that everyone can contribute what they can to a movement, but one person's greater contribution or risk should not be seen as invalidating another's. This leads to many levels of action which mutually reinforce other levels, rather than detracting from each other. He pointed out that in advanced stages of 'people's war' such as in Vietnam, many different levels of action are still employed, not merely the military level of the National Liberation Front. He also stated that in the present case it would be suicidal to engage in any large-scale militant action. He gave one example of what 'people's war' would mean that evening. Some people could go back to the dorms and persuade others to join the movement, while others could play touch football in the area being patrolled by the police to show that they were not intimidated by the occupation of the campus. At no time did he say or even remotely imply or suggest that he advocated a militant action that evening, nor did his in-depth analysis of 'people's war' make such an interpretation possible for any person who had ears to hear and a mind to think."

These witnesses were much preoccupied with the presence of police. They expressed fear and anger, and were inclined to expect trouble with the police that night. They were determined not to be intimidated by the police, and to harass them where possible. By and large, Professor Franklin was seen as speaking to these issues in a way that fostered resistance but not violence. His task was seen as uniting the people against the common foe: putting together the university's complicity in the war, the linkage of the struggle here with the struggle in Asia, the necessity to respond vigorously on many levels of action. For example Pat Faulkner testified that he understood Professor Franklin to mean that all levels of actions are all right, even writing letters, and that it is necessary to wage war on many levels to win. He felt that Professor Franklin gave a speech in which he approved a wide range of actions, including trashing, but did not emphasize violent responses.

Professor Franklin's witnesses gave the term "people's war" a variety of emphases, but the words were generally understood to have a range of connotations. These included (1) harassment of police; (2) taking control of our own lives; (3) bringing the war home; (4) strike; (5) learning from the peoples of Southeast Asia; (6) attention to our war here, not only the one in Indochina; (7) doing whatever conscience dictates, which might include trashing; (8) determination not to be intimidated by police, not to shrink from threats.

4. Post-Rally Events: In the course of the hearing, on October 28, the Advisory Board made the following statement on post-rally events:

"With respect to the Old Union courtyard speech, the Board is now in a position to give its view of the value of testimony about events following the rally. We admitted testimony on these matters because the University Administration, in order to demonstrate that there was a risk that prohibited conduct would follow the speech, introduced evidence for the limited purpose of showing that such conduct did in fact occur. We now feel that

this evidence—concerning the fight on White Plaza, the alleged false alarms, the shootings, and other incidents—need not be rebutted. We have reached this decision because, in our view, the existence of risk is adequately shown by pre-and co-existing conditions, and does not require demonstration by referring to subsequent events."

It is a matter of record that untoward events of the sort mentioned above did in fact occur that night, beginning immediately after the rally. We limited testimony on these matters for two reasons: (1) the charges did not contain any references to Professor Franklin's post-rally conduct; (2) we had good reason to believe that significant risk existed without reference to post-rally events.

D. Defenses and their analyses

1. Principal Points made in Defense Against Charges in Paragraph 10.

Professor Franklin, in testimony and argument, made several points in defending these charges:

a. The speeches were brief, especially the second one at the very end of the evening's program. Such brief speeches could hardly have had the impact ascribed to them by the University Administration.

b. It was difficult to hear the speeches. Except for those near the speakers, consisting to a considerable extent of Professor Franklin's close associates, audibility was a problem. The testimony of several witnesses who were not close to the speaker was challenged by Professor Franklin.

c. What could be heard was innocuous. It was meant to inform, educate, and persuade to a political viewpoint. It was not intended to incite, inflame, or cause violence.

d. Most of the people at the rally had already decided what they were going to do by the time Professor Franklin gave his second and closing speech. In this speech, he essentially gave them a political rationale for what they had already decided to do.

e. Even if his speeches were taken as inflammatory by some members of his audience, they were well justified by Stanford's condition as a fascist and imperialist institution, and by the presence on the campus of an occupation army consisting of police who frequently kill black and brown people, and indeed had just killed a black brother.

f. In any event, Professor Franklin should be able to give such speeches with impunity, since all speech should be considered to be constitutionally protected, even where appreciable risks are posed.

g. If speech is to be restricted at all, it must be done within a very narrow band. Such a band could not include general prescriptions for hostile actions or even for violence. Specific prescriptions for violent acts would be required, and these must be confirmed by specific evidence that individuals had been moved to carry out those same specific acts by the speech in question.

2. Analysis of the Defenses: The length of the speeches is much less important than other characteristics: content, delivery, context, audience. In any event, the first speech was not particularly brief, and the second was in a crucial position: at the very end of the rally.

In regard to audibility, we conclude that those who wanted to hear the speeches could do so. This is admitted by some defense witnesses, and to a certain extent by Professor Franklin himself who testified that at the time he felt he could reach those who really wanted to hear him. The main variable seems to have been attention; some members of the audience paid close attention to his speeches, others little. Among those who did pay attention, there is considerable agreement as to content, though witnesses differ as to interpretation.

There is no meaningful way to consider Professor Franklin's behavior in the Old Union rally without a firm grasp of the con-

text in which the rally occurred. The mood that evening was tense and angry. After the passage of so many months it is difficult to recapture the sense of anxious expectation that characterized the campus that evening. The Old Union rally followed several days of continually escalating events: threats of coercion, actual coercion, arson, police action, and hostile confrontations on campus. We have already summarized recurrent themes of the immediately preceding rallies at Dinkelspiel on February 9th and White Plaza on February 10th. As the Board concluded in its statement of October 28th, cited above, substantial risk existed on the Stanford campus before and during the Old Union rally.

There are additional aspects of the context for the Old Union rally that deserve consideration. Professor Franklin rose to speak as a well-known and respected leader of the "movement". Defense witnesses testified that he was viewed with admiration and his ideas were taken seriously. Professor Franklin testified that the time of these events in February was a crucial one for the "movement", a time when the "movement" might transcend itself.

Testimony in the hearing, mainly from defense witnesses, brought out the fact that this occasion stirred memories of other similar occasions which also provide meaningful context for the Old Union rally. The events approximately a year earlier at the time of the military action in Cambodia came up repeatedly. Indeed, one of Professor Franklin's main contentions is that he was attempting to foster a "Cambodia-type strike". A number of defense witnesses, including especially Braunstein and Professor Franklin, discussed the events of the Cambodian period and compared them with the events during the Laotian invasion. It became clear that the protest events of the Cambodian period, viewed with approbation, included a spectrum of activities, some of which were nonviolent, some of which were patently coercive, and some of which were overtly violent. The coercive and violent activities included: forcible blocking of entries into buildings for sustained periods, large-scale breaking of windows, bombings, and fire bombings.

The Old Union rally also brought back recollections of other night rallies held in similar circumstances, especially when police were on campus, not only during the Cambodian protest but at other times in the past few years as well. There has been a clear tendency for such occasions to be followed by violent behavior. This fact was known to Professor Franklin, since several of the defense witnesses commented on his participation in these protests.

Two of the major themes permeating the three rallies of February 9th and February 10, advanced by Professor Franklin and many of his close associates, are especially pertinent to his closing speech at the Old Union rally: (1) all-one-war; (2) multiple-levels-of-action.

(1) All-one-war is the theme linking the struggle at Stanford with the struggle in Southeast Asia. It is the heart of the problem, emphasized by Professor Franklin in his speeches, affidavit, testimony and argument.

The speeches attack Stanford's war complicity, draw parallels between racial oppression in America and Asia, and emphasize the necessity to learn from the peoples of Southeast Asia how to resist oppression at home. By the end of the Old Union rally, the cumulative weight of these linkages suggests that one way to fight the war now is to fight the police and administration here.

In his testimony Professor Franklin says: "... what I say there basically is that we can't separate the war in Southeast Asia from the war at home. Now on all these

points, all four of these speeches that were given in this 24-hour period—that is from the night before in Dink through this—all four of those speeches are essentially saying—are saying the same thing. They're expressing a set of ideas which I consider the most important ideas. . . . And then this seems to me the most essential thing, both in this speech and in the second speech, to try to show people just as clearly as possible that in fact that occupation army of police that was on the campus was part of the same war that was being waged in Southeast Asia and that was being waged in the Black ghettos and in the barrios of the United States."

This point is further clarified in Braunstein's defense testimony, under cross-examination:

"And the people fighting the United States in Southeast Asia are fighting the same battles that people fighting the police . . . who were on campus in the Old Union Courtyard one and two of the year before and are fighting the same battle as the people trying to get rotten research off this campus and are fighting all these battles, and they're all the same battles."

"Then if it's all one battle, the word 'opposing forces' relates to all the people on the other side in this big global battle."

"I've later learned that that is what's known as 'People's War'; is part of what is known as 'People's War'."

"Q. I take it in the context in which you were speaking you at least included the police in that reference?"

"A. Oh, certainly. Especially that night, yes. I also included the University administrators."

(2) The war is to be waged with the multiple-levels-of-action formula. Each person is to do his own thing, whatever he can, whatever he thinks best, using his imagination to find ways of resisting the occupying forces. This theme has a familiar ring from its recurrence during the preceding few days. We have earlier quoted Braunstein's remarks on this subject at the Dinkelspiel rally on February 9th. It is clear from a variety of references in several rallies that this formulation is meant to advocate a spectrum of activities which might include contacting Congressmen, persuading students in dormitories, being active on campus at night, refusing to be intimidated by the police, blocking doorways, occupying buildings, breaking windows, putting the computer out of service for a long time, destroying the computer, or doing other things for which one might not wish to "take credit."

In his testimony Professor Franklin said he felt impelled at the end of the rally to speak about: "... that action that was going to be taken, which was essentially going back to the dorms to talk about the war in Southeast Asia and about the police occupation of the campus and for people to be there and exercise their right. That it was important for somebody to explain to people that that action itself was, you know, just as legitimate a part of this war as, say, the armed self defense of the Vietnamese people or the people of Laos And in that speech I mentioned using the methods of people's war. And at that point I was speaking very directly to the people there, I think, who considered themselves revolutionaries. Because I knew that they would have a basic understanding of what that meant, and that that phrase summed up a whole lot of experience."

Braunstein testified for Professor Franklin, "There are all sorts of actions on various levels, including people breaking windows with rocks and people burning down buildings, as yet unidentified people burning down buildings, and so on, that sometimes have the same goals in mind and sometimes don't."

Significant in this context was the term "people's war." It was interpreted by various witnesses in different ways. It seems to include a wide range of suggested actions, some

of which are nonviolent, and some of which are violent. It can clearly include guerilla warfare. Some witnesses interpreted this as its primary meaning, others gave this meaning less prominence. Maoist writings use the term "People's war" for all action, in particular guerilla warfare, in which the warriors merge with the masses. Professor Franklin acknowledges in his testimony that guerilla warfare, including assassination and bombings, is one important component of people's war, but denied it was the one he had in mind when he used the term in his speech. Defense testimony indicated that the concept of people's war extends beyond military action, but did not deny that it prominently includes military action. Given the repeated explicit linkages of the struggle against the police occupation army here and the war in Southeast Asia, in the context of recent night violence on campus and an afternoon of police confrontation, it is difficult to believe that most listeners would be insensitive to the violent connotations of this term. Why repeatedly use warlike terms and images—such as Professor Franklin's "war on this campus"—if peaceful actions are intended?

Similar considerations apply to Professor Franklin's advocacy of action to be taken against the occupation army in small groups. It is clear that small groups can conduct dormitory discussions and other peacefully persuasive activities, and that this did in fact occur, though we learned very little about the focus of such discussions—e.g., whether they were intended to foster particular nonviolence or violent tactics of protest. In any event, such dormitory discussions may well have been one of the meanings of his alleged recommendations for reliance upon affinity groups. He advised against mass militant action, meaning essentially violent confrontation with the police, on tactical grounds. Such action was not feasible because the police were too strong. It is also clear that the smaller groups could engage in violent activities as has often happened in similar circumstances at Stanford during the past few years—i.e., following night rallies permeated by angry speech. Two days earlier, February 8, after a night of "trashing", a sheet was distributed at a "movement" rally under the title "Do It!" It endorsed the previous night's activity and called for more of the same, indicating that tight affinity groups can be helpful in doing whatever people want to do.

Whatever the activities that Professor Franklin was urging upon individuals and small groups, it appears that lateness of the hour was positively desirable—"as late into the night as possible". In view of the behavior of some individuals and affinity groups at Stanford in similar circumstances during the past few years, it is reasonable to suppose that lateness might be useful as a cover for violent activities though it could of course be used for peaceful activities as well.

Professor Franklin's two Old Union speeches were given in a hostile tone. This is apparent in the content of the first speech, and the effect is heightened when one listens to the tape and hears his tone of voice. Even when the speech is briefly interrupted by a KZSU interview, the angry tone and the emotional crowd response can be clearly detected. Although the second speech is covered over by a KZSU interview, similar indications are available from the tape and from testimony.

In the course of the hearing, both Professor Franklin and Braunstein indicated that ambiguity about tactics was desirable to these rally speeches because KZSU was broadcasting them and the police would presumably have tape recordings. To advocate violent tactics openly in this context would have exposed the speaker to later sanctions. We were informed in the hearing by Professor Franklin of his "political decision" to keep

his position at Stanford, hence caution about open calls for "revolutionary violence."

Thus, we are faced with a difficult problem: how to interpret speech deliberately given in ambiguous terms. But we have seen already that considerable clarification emerges from a close examination of the text, from the full context provided by preceding events, and from the way in which the speech was delivered. In essence, Professor Franklin came into a combustible situation, focused hostility on certain targets, intensified existing hostility toward those targets, and urged a spectrum of actions against them: some peaceful, some coercive, some violent. We must now turn our attention to his audience in order to inquire whether they were likely to understand him and whether Professor Franklin must have expected the risk of prohibited conduct to be increased by his behavior.

The tone and content of Professor Franklin's speeches must have been particularly significant for two groups: 1) people in the movement; 2) people who are violence-prone for whatever reason. In respect to the first, these are people who are responsive to Professor Franklin by virtue of past association, respect, dedication, and sharing of common goals. They tend to understand the nuances of his speech, as was evident at the hearing itself. As for the second group, it is well known that public meetings characterized by intense anger and hints of violence tend to attract, both at the meeting and via media coverage, individuals who are drawn to violence for a variety of reasons, not necessarily political. Whatever the reason for their susceptibility to violence, they tend to find such occasions exciting. They may be induced by angry rhetoric to commit acts of gravity, particularly in the context of recent examples of violent behavior.

Professor Franklin testified that he was aware of the long-term, bitter antagonism between Venceremos and FCM; and he was aware of the immediate, clearly expressed hostility toward the small FCM group at the rally. The presence of these mutually hostile groups at the rally certainly added to the risk. The use of violent rhetoric in such circumstances increased the probability of attack and counter-attack.

We think that "movement" people were capable of understanding the messages. We refer here to familiar connotations understood by a group sharing common interests and values. For example, reference to "militant action on campus" in 1971 is understood by many people to mean "trashing" which in turn is understood to mean "window-breaking." These are not the only connotations of the terms, nor are they understood by everyone who comes on campus. A few years ago, the terms did not have these connotations. But common usage in concrete situations has led to a widely shared understanding.

Those devoted to the "movement" had a rich refresher course in such terms during the rallies of the preceding few days which we have already summarized. Professor Franklin is explicit in his testimony that he was aiming his remarks specifically at them, wanting primarily to be understood by them. Braunstein testified that there is special communication within the "movement" and pointed out that Professor Franklin referred to "us" at the rally. But the defense, in effect, asks us to believe that, on the night of February 10, individuals in the "movement" failed to understand the coercive and violent connotations of phrases like "war on this campus", taking action on multiple levels to resist oppression here, and "we must learn from the peoples of Southeast Asia that when confronted with an occupation army, we must respond with the methods of people's war". The defense puts forward its bland interpretation of such phrases even though they were expressed in a very angry tone and

in a context of profound hostility toward the university—by a respected leader who generally approves coercive and violent tactics in campus disputes (though he denies he advocated them on this occasion). We must therefore examine possible reasons why the audience might not have detected the menacing connotations of his remarks on the evening of February 10.

From the testimony in the hearing, we do not believe members of the "movement" were obtuse; nor is their anything credible in the record to suggest that they were in such a conciliatory mood that his angry rhetoric failed to reach them. Were the "movement" members of Professor Franklin's audience so concerned with trying to win over the Roble group that they rejected all coercive and violent connotations of his remarks? This possibility deserves further consideration.

During the rally, "movement" people in control of the meeting showed little consideration for the feelings of the Roble students. Indeed, Professor Franklin seems to have been concerned about this situation, since he devoted a good deal of his first speech to persuading the Roble group to accept the "movement's" view of the situation. As a Roble speaker made clear in the KZSU interview, the difference between the Roble contingent and the "movement" was not only one of demands (narrow vs. broad) but of tactics (non-violent vs. violent). In this episode, Professor Franklin demonstrated his authority as a leader of the "movement", when he easily stopped the flow of the meeting, re-opened the question, made a major speech, and got a re-vote.

In his way, Professor Franklin was trying to persuade the Roble contingent to link up with the "movement" in a united front, at least for the moment. His way of undertaking this persuasion was itself inflammatory. He made assertions of such hostile content in such an angry manner regarding the University and the police that, whatever their effect on the Roble group, they must surely have intensified the resentment of many persons favorable to the "movement" and thereby raised the probability of violent actions later. We have earlier quoted a portion of his first Old Union speech pertinent to this point. Finally, his do-your-own-thing formula permitted some encouragement for Roble students to take peaceful actions and still leave room for encouragement of "militant" actions by the "movement".

This brings us again to one of the central themes in the entire case. At Old Union as at White Plaza, the actions urged by Professor Franklin were not exclusively coercive or violent. He advocated a wide range of protest actions: some peaceful, some coercive, some violent. If a person removes valuable merchandise from a store, paying for half, but not paying for the other half, is he culpable for the part he stole? We believe that the presence of peaceful recommendations cannot immunize a person from sanctions if he has urged imminent coercion and violence as well.

Once again, as at White Plaza, Professor Franklin was the final speaker, and once again his speech was promptly followed by events of a disruptive, coercive or violent nature. The probability of this occurring by chance is very small. At the least, it reflects his leadership position in the "movement" and the riskiness of those situations in which he spoke. He cannot avoid the conclusion that his speeches, the last on each occasion, increased the probability that illegal acts would follow the two rallies.

In an earlier section on "Fundamental Issues and Standards", we have indicated that the University must have the right to put some constraints on speech in dangerous circumstances, but only with great caution. This applies to acts of incitement to imminent lawless action that are likely to produce such

action. "Lawless" in the university context includes state or local laws, the *Policy on Campus Disruptions* or other university regulations, or common-law understandings of professional responsibility.

In judging the applicability of this standard to the present charge, we have been guided by these questions: (1) What is the entire context surrounding the alleged incitement? (2) What was communicated to the audience? (3) What would the speaker judge to be the effect of his communication on the audience?

Since we wish to sustain the university's vital tradition of fostering free expression in its widest diversity, we are exceedingly cautious in considering possible constraints on speech. If such constraints are ever to be invoked, they must be reserved for extreme situations. We are asking whether the context here was that of a highly combustible situation, whether the speaker gave an inflammatory message in that context, and whether the speaker had good reason to anticipate that his message would increase the risk of imminent lawless action. If indeed we find that the speaker issued a call to violence, he is not protected by having issued it in euphemistic jargon. Such a call may be quite as effective as one issued in more stark terms. In any event, the language used here was hardly occult.

Although Professor Franklin's witnesses were inclined to protect him by minimizing their understanding of coercive and violent connotations in his speeches, they did not exclude such connotations—nor did he. The difference between them and administration witnesses was mainly one of emphasis. In the spectrum of activities advocated by Professor Franklin, the defense emphasized the legal end, whereas the administration emphasized the illegal end.

In our detailed analysis of the context for his Old Union speeches, we have determined that persons active in the "movement" must have been quite familiar with the coercive and violent connotations of Professor Franklin's phrases, that they were responsive to such connotations, and that Professor Franklin must have been aware of these facts.

Finally, we must consider the line of defense that, even if Professor Franklin were considered to have carried out such an incitement, he would nevertheless be justified by his perception of Stanford as a fascist institution playing an important role in an imperialist war.

We recognize that Professor Franklin is pressing for reform in important areas of social concern. Can this justify coercive behavior in campus disputes, or the fostering of a climate of violence on campus? Once any person is granted this privilege in the name of a good cause, we must grant it also to others who feel they have worthy aims. When these rights conflict, as they inevitably must, are we to condone low-grade guerrilla warfare on campus? If we deny to others what we grant to Professor Franklin, we have adopted a double standard: coercion and violence in the university may be condoned if we approve its aims, but restricted if we disapprove its aims. Then it becomes a simple question of whose ox is gored. But every cause is fervently supported by some, eloquently justified by some, pursued with passion by some. In a way, every war is a holy war. If we accept Professor Franklin's holiness, how are we to reject the holiness of other true believers? In our view, this course is not morally defensible. We must do our best to apply one standard across all political preferences and that standard must not condone violence on campus.

E. CONCLUSION

Taking into account content, context, delivery, and audience, did Professor Franklin's two Old Union speeches include urging and inciting to disruption of university ac-

tivities, or threat to persons or property? Must he have known that this exhortation would be widely interpreted as immediate advocacy of disruptive or violent behavior?

1. The situation was risky. Illegal acts had occurred earlier that day. There was intense resentment toward the war, the police, and the university; there had been serious frustration for the "movement" earlier in the day; bitter political adversaries were present at the rally and identified by the chairman; protest actions including coercive and violent possibilities were under discussion; the police were present on campus; there was a well known history of violence in similar circumstances at Stanford. In general, the higher the risk, the less it takes to trigger coercive and violent behavior.

2. The targets of Professor Franklin's animosity were quite explicit—the police and the university. He made an intensive effort in the two speeches to generate further hostility toward these targets. He provided justification for coercive and violent behavior toward them, without specifying precisely what the nature of such acts might be, leaving that to the judgment and imagination of each individual or small group.

3. The urging of immediate retaliatory action towards the police and the university was clear. A great sense of urgency was conveyed by both the tone and the content of his remarks. While no detailed blueprint for action was provided, the necessity for prompt action was a strong message. The overall effect was to increase the likelihood of imminent lawless action.

Taking into account the full context surrounding his speeches at the Old Union rally, the messages he communicated to his audience, and what he should be able to judge about the effect of these messages under the circumstances, we reach the conclusion that Professor Franklin intentionally urged and incited his audience to engage in conduct which would disrupt activities of the University and of members of the University Community and threaten injury to individuals and property.

The Advisory Board thus finds that the charge in No. 10 is sustained.

Dissenting Opinions

Professors Brown and Kennedy, while agreeing with substantial portions of the majority's account, dissent as follows:

The majority sustains the charge of incitement against Professor Franklin citing (1) an extensive background of material from speeches at this and other rallies that supply context for his last speech; (2) Professor Franklin's first speech at this rally, which also supplies context and reveals relevant attitudes of his own; and (3) words in the second speech that constitute, in the majority's view, sufficiently explicit invitations to do violence against persons and property.

We dissent regarding some matters of context, as well as on the finding with respect to Professor Franklin's own speeches.

In describing the context of the rally, we would give more weight than does the majority to the presence of the Roble students and to their impact upon events in the Old Union Courtyard. The interaction between the group of Roble moderates (concerned about the invasion of Laos but not part of the "movement") and the "movement" group itself provides a central theme for the rally. Professor Franklin's own first speech is directed predominantly to an attenuation of those tensions and to a reconciliation that would accommodate the new recruits to "movement" objectives. It is, in essence, a long argument that political prisoners must not be forgotten, and that there is a fundamental identity between the struggle of Asian peoples against U.S. imperialism and the struggle of oppressed people and anti-war students against repressive forces at home.

As a majority states, the speech contains a heavy tone of anger against the police and other forces that, to Professor Franklin, symbolize this oppression. We nevertheless believe it plausible that the speech was intended to make a group of Stanford students identify, perhaps for the first time, with oppressed people; we do not see evidence that Professor Franklin's intention was to turn them explicitly to violent actions. In no sense can this first Old Union speech be regarded as actionable; indeed, the University administration does not attempt to persuade us to find against Professor Franklin on the basis of its content. To the extent that it contains intensity and anger, and to the extent that these are directed against the police and the University, the speech might be said to have added—along with other speeches at the rally—to the risk that prohibited conduct might follow. But all agree that nothing in the content of this speech approaches incitement. Indeed, we feel that the speech presented, in however objectionable a style, some legitimate concerns about the plight of prisoners, the existence of police brutality, and other significant issues.

Clearly Professor Franklin and other speakers believed that a major mission of the "movement" people at the rally was to undertake the "education" of the rest of the Stanford community. Professor Franklin's own first speech concludes with a plea that those present go out to the people "and teach them what we have learned in the movement," and that any who are not persuaded should "get up here [to the microphone] and we should discuss it." At the conclusion of his speech he testifies that he went over to discuss the matter further with the Roble group. The speaker who followed Professor Franklin to the podium commented that the important thing was to "go to the dorms, go to the people we want to talk to. . . ." A later speaker extends the suggestion by hoping that those at the rally will go to the dorms and "rap all night." Recruitment, broadening the base of the "movement," educating the community; all these were significant themes in the development of the meeting's context. By its relatively stronger emphasis on the more violent rhetoric, in particular Professor Franklin's, the majority has decided against what seems to us a plausible, even persuasive, second view of the matter.

The content of the second speech, of course, is not available to us except through the testimony of witnesses. According to Beyers, Professor Franklin called for a "people's war against the occupation army of the police," and he "suggested that people should go back to their dormitories, form meetings, meet in small groups, decide whatever they wanted to do, to do it as late at night as possible, and to do things which would bring more of the occupation here." Professor Franklin's version in his affidavit is only slightly different. He, too, claims to have said that "when confronted with an occupation army we must respond with the methods of people's war." He adds, "I ended by telling people that people's war meant that they should go back to their dormitories, organize people into small groups, talk with them, play football, or whatever, as late into the night as possible." These differences are not very substantial; they can easily be accounted for by differences in recollection.

The majority analyzes these collections of phrases in such a way that they are strongly persuaded as to their meaning and that the meaning sustains an incitement charge, given such other factors as risk. The logic consists essentially in the elimination of various attenuative constructions that are more benign. In our view this interpretation is not strongly persuasive. The phrases upon which attention has been focused are isolated from a substantial matrix of interstitial speech, the

precise construction of which we do not know, and about which we must be careful not to draw too confident appraisals. Two examples will illustrate the point. First, Professor Franklin says that in the context in which he used it, "People's war" was clearly indicated to mean "thoroughly merging with the masses;" he states that he used the football game as an example of that kind of tactic. It is significant that virtually all of the witnesses link the words "people's war" to the example of the football game. Professor Franklin states in his affidavit that this was the only example he used, and the cumulative testimony seems to bear him out. Second, the phrase "as late into the night as possible," interpreted by the majority as a call to militant action by small groups, could equally have appeared in a context in which it applied primarily to late dormitory discussions and to legal (though perhaps risky) methods of taking up the time of the police. Such an interpretation gain in plausibility from Professor Franklin's testimony that although he does not in principle disapprove of trashing, he would not have urged it on that occasion, both because of the heavy presence of police on campus that night and because it would have alienated those now to the "movement."

The point is that none of these interpretations has a great deal of certainty about it. The ones we have just mentioned may be a little less plausible than those favored by the majority, but only a little less. The "hard" data on words are so fragmentary, and depend so much on the kind of context-construction that is very sensitive to whatever bias the witnesses may have had, that we find them inadequate to meet a "strongly persuasive" criterion that Professor Franklin is guilty as charged by the University administration.

We are not strongly persuaded by the impressions of the speech given by various witnesses—as opposed to actual reconstructions of wording. Such impressions are especially subject to the bias of expectations. The differing treatments of Professor Franklin's account of the football game provide one example among many. Some witnesses regarded it as a euphemism for more violent activity, others regarded it merely as an opportunity for a bad pun, while still others interpreted it as we would, as an invitation to occupy the time of the police.

In effect, the majority report argues that Professor Franklin was employing words well understood to his audience but not to others. But there is no convincing evidence that any substantial number of the audience would have translated his speech into an invitation to commit violent acts. Each phrase, like "people's war," has been subject to a number of conflicting interpretations in the testimony. Furthermore, the reconstruction of a code depends on one's ability to capture a reasonably large portion of the message, and in this instance we have only scattered elements. Although we think it is quite possible that Professor Franklin advocated a range of actions some of which may have been illegal, we do not find the evidence strongly persuasive that his speech constituted the advocacy of imminent lawless action.

The majority emphasizes the extremity of the risk in the situation; we do not disagree with their evaluation, but we stress more heavily the doubts we have about the context and the meaning of the words actually spoken.

To find against Professor Franklin on this charge might, we believe, force a faculty member addressing a political rally in the future to guard against possible cryptic meanings that his speech might convey to a segment of his audience whenever a situation of high risk obtains. The social cost of such a prohibition must be balanced against the benefits to be derived from being able to prosecute somewhat ambiguous speech in

dangerous situations. We find the costs too great.

Accordingly, we do not sustain the charge against Professor Franklin as stated in Paragraph 10.

DISCUSSION OF SANCTIONS

A. Introduction

The University administration proposed in its statement of charges that Professor Franklin be dismissed, and has argued in its response to Professor Franklin's Motion to Dismiss Charges that dismissal would be the appropriate penalty even if the Board sustained only one of the last three charges (No. 8—White Plaza Rally, No. 9—Computation Center Incident, No. 10—Old Union Rally).

In the section on "Fundamental Issues and Standards" of this report the Board has agreed that the purpose of academic due process is to establish:

1. That the stated cause is the authentic cause for dismissal, rather than a pretense or makeweight for considerations invading the academic freedom or ordinary personal civil liberties of the individual;
2. that the stated cause exists in fact;
3. that the degree of demonstrated professional irresponsibility warrants outright termination of the individual's appointment rather than some lesser sanction, even after taking into account the balance of his entire service and the personal consequences of dismissal. (N. Van Alstyne, *Bulletin of the American Association of University Professors*, Autumn, 1971)

In the preceding sections the Board has dealt with the first two of these points; we now proceed to the contents of the third.

Professor Franklin's performance as a scholar and teacher has not been questioned in these proceedings; the Board ruled on this matter on October 28, 1971, in its response to Professor Franklin's motion:

"The Board requires no testimony supporting Professor Franklin's exceptional competence as a scholar and teacher. His competence is not in question in this hearing; the protections of tenure extend to all tenured faculty members without regard to judgments of their relative merits."

The remaining question is thus one of appropriate penalty, taking into account the Board's findings of fact, the entire record, and the consequences of the sanctions that might be imposed.

Beyond the Board's findings of fact, several elements of the record in its entirety deserve consideration. First Professor Franklin is led into a pattern of conduct that directly involves attacks upon the values of the university as now constituted, and also includes encouragement of violent or coercive tactics against the members of the university community and the society of which it is a part. Second, Professor Franklin has repeatedly reminded the Board that he bases his actions upon a different set of perceptions about the university and society from those of the majority of Stanford faculty members, including members of the Board. Such perceptions of reality, and the convictions that emerge from them, might provide an explanation for his conduct which would assist the Board in its judgment. Third, the rights of the university's entire membership not to be disrupted by the unbridled exercise of self-proclaimed moral conviction must be balanced against Professor Franklin's right of political expression and action.

It is the need to balance these frequently conflicting interests which underlies the determination of appropriate sanction.

B. Professor Franklin's pattern of conduct

From the viewpoint of most Stanford faculty members, who themselves are of course subject to limitations of perception, Professor Franklin pursues a course of action that seeks systematically to disrupt the normal functioning of the university. Professor Franklin, on the other hand, asserts that he

is not trying to destroy the institution, but to convert it to "serve the needs of the people." Professor Franklin asserts that the university's actual function is to serve as a training and research center for the maintenance of an imperialistic hegemony over the "Pacific Basin Empire;" yet to most of his colleagues, that is a bizarre mischaracterization. Thus the basis of a pattern of conduct is itself subject to conflicting interpretations, depending upon the perception of reality from which it is being described.

A major element in Professor Franklin's treatment of issues in the university is an attempt to disembodify the institution from the human beings who make it up. Characteristically, an instance of policy or action in one area is identified and found to be unacceptable in some respects; guilt is then globalized to the entire institution, and it and its chief administrators are labeled as responsible in absolute terms. The dehumanizing process extends to the treatment of the individuals so labeled: they are characterized as "pigs," "fascists," "lackeys," and the like.

The essential feature of the confrontation with the institution involves a call to coercive or violent action, based upon indignation generated by the particular issue raised. In such calls, however, Professor Franklin has been careful to limit his own role to that of advocate rather than participant. He has said that he does not wish to compromise his own position as a tenured member of the Stanford faculty, feeling that he is more valuable to the "movement" because of that status than, for example, is a student. For this reason he has stated that he avoids participating directly in disruptions, illegal occupations of buildings, and the like. For the same reason one may presume that he also attempts to avoid direct incitement; he does, however, acknowledge and praise violent conduct when it is carried out by others—as when he says in his affidavit:

"I have the right to voice public approval of the fragging of officers in Vietnam and the breaking of windows at Stanford University. In fact, I am ashamed to admit that I have not engaged in any of these activities, nor incited, counselled, advised or urged others to do so. So I find myself in the awkward position of defending myself against allegations of things which I have not done but perhaps I should have done."

In this way, encouragement is given to persons who share Professor Franklin's views about the nature of the university to engage in illegal acts in which he is not willing to engage. This influence extends not only to members of the "movement," but also to non-members who are in general sympathy with a number of the causes for which Professor Franklin is an advocate. The alleviation of poverty, an end to the war in Southeast Asia, and more rapid progress toward social justice are all goals with which the majority of Stanford students and faculty members are in sympathy. In supporting these causes from his particular political stance, Professor Franklin forcefully remonstrates that the university is a primary agent of injustice in order to focus protest action on the university itself. To dramatize the institution's complicity, a variety of immediate issues may serve; these may present themselves as targets of opportunity based on the vulnerability of the institution, on the time scale of university decision-making, on administrative errors, or on genuine failure on the part of the university to do what it said it would or what it should have done.

The events leading up to February 10th provide an illustration of the use of a target of opportunity. The running on the computer of an SRI program entitled "Gamut-H", allegedly having direct application to amphibious assault operations in the Vietnam war, was coupled to the general mood of anger on the campus about the Laotian invasion. Indeed it emerged in testimony that the local

issue—Gamut-H—had been stored for the tactically useful moment; it had been known to members of the "movement," though apparently not to Professor Franklin, for at least a week before the Laotian invasion. The existence of that program was proclaimed to be a major basis for selection of the Computation Center as a target for occupation—although the urgency of the demands for remedial action contrasted oddly with the fact that the "movement" had been willing to introduce substantial delays while seeking the tactically opportune moment for releasing its information. The circumstances also reveal a typical failure to use alternative, non-coercive channels for securing the same objective. If a professor feels that such channels are ineffective, he can be instrumental in creating new means of legitimate problem-solving within the university. The violent episodes in which Professor Franklin played a role represent by no means a "last resort" effort after non-coercive possibilities have been exhausted.

Even such a brief description as the above indicates that the pattern of conduct of Professor Franklin and other members of the "movement" contains paradoxical elements that are subject to varying interpretations. What may appear to his following to be a sincere concern with issues of domestic and international injustice and a zeal to make the university more useful to society will appear to others to be an instance of cynical manipulation to achieve ends—tactics that contrast vividly with the ideals on behalf of which they are invoked.

Such a stance, in which a member of the faculty wishes to encourage violence against the university but also wishes to fall short of actual incitement to or participation in such violence, leads inevitably to covert or ambiguous recommendations. On the one hand, Professor Franklin attempts to stay on the permissible side of conduct, in order to preserve his position; on the other hand, he hopes that illegal acts will come about and wants to do what he can within the law to encourage them. Such tactics become particularly effective in escalating an already inflamed series of events.

The demonstrated existence of this pattern of conduct could be used in either of two ways in constructing an argument concerning penalty. His stated intention of "going right up to the line" might be taken as evidence of his awareness of that line, and his consequent determination not to violate it. However, continuous probing of the university's will to enforce its rules might lead to a high likelihood of future transgressions, quite apart from the Board's findings of fact on the current charges.

C. Differing perceptions of reality

Balanced against this pattern of conduct, and in part responsible for it, is a perception of reality which Professor Franklin and his followers profess to share which differs drastically from the consensus in the university. In his opening argument Professor Franklin proclaimed deep convictions about the evils of American foreign and domestic policy and about the inevitable influences of our socio-economic system in shaping that policy. Essential to this perception is a mistrust of the allegedly intricate interrelationship between the economic power of American's "ruling class" and the maintenance of policies that are imperialistic abroad and oppressive at home. Of crucial importance in the present case is his expressed view that the university, run by and for this ruling class, possesses a substantial institutional guilt for the ongoing prosecution of those policies. Consequently he sees no way to disengage American foreign imperialism and domestic oppression from the impetus and support given to those policies by the university.

The outcome of this perception of reality

is a conviction that the situation must be radically changed—by persuasion if that is possible and by violence if persuasion is unavailing. The university becomes the most immediate and obvious target for such action. Since Professor Franklin maintains that the class interests of those with power in the university make it unlikely that they will engage in more than token gestures of reform, he sees coercive tactics, which can include violence, as most likely to produce the changes he desires:

In response to those who claim to abhor violence on campus, Professor Franklin replies that the university, as an integral part of the capitalistic system, is itself systematically engaged in the support of violence—a violence that is sometimes very open and apparent, as in Vietnam or in police oppression in the ghettos, but is often hidden yet none the less devastating in the economic oppression that is exercised domestically against minority groups and internationally against Third World nations. Because of the university's complicity in this range of violent activities, Professor Franklin maintains that it is not only appropriate but necessary (taking tactical consideration into account) to engage in such acts of violence against the university as can lead it in the direction of far-reaching reorganization, "to serve the needs of the people" and not of the privileged few. This results in the pattern of conduct described in the preceding section.

Despite the strident, opportunistic, and aggressive behavior which is in part caused by these perceptions, the Board affirms that the university must not only tolerate, but must actively foster, the widest range of opinions possible. We realize that any perception of reality can be challenged, stretched and revised by the competing views with which it comes into vigorous contact and debate on the university campus. We are committed to the principle that in the competing marketplace of ideas truth can make it without cheating—that is, that in the competition of conflicting perceptions of reality truth can survive without resort to the stifling of dissent. We must engage, and have tried to engage, in "the willing suspension of disbelief," so as to enter as sympathetically as possible into the perception of reality espoused by Professor Franklin. Such matters as conviction, motivation and rationale are important determinants in the assessment of penalty, even though they may not enter directly into findings of fact.

D. The conflicting rights

There are special reasons for the exercise of caution in the application of sanctions in this case. First, loss of tenure is at risk. We need hardly review here the significance of tenure; it is not merely a protection of the individual against unwarranted attacks from the institution from outside political forces. Tenure thus protects freedom for the full range of scholarly inquiry, and both the institution and the individual have a large stake in its continued good health. At the same time, it exacts from the tenured faculty member obligations of performance and conduct.

Second, the impoverished state of "case laws" for academic proceedings of the sort gives great weight to the outcome of the present case. There is much to be said for caution in ground-breaking. Yet caution demands regard both for the rights of the individual and of the institution.

The rights of the individual must be balanced and judged in relation to the rights of others having different perceptions, and to the rights of the entire university community to function and to survive as a center of unregimented thought. However, the expression of deeply-held convictions of one who affirms a minority perception of reality should not be denied merely because the majority feels more comfortable when not confronted by challenge.

In dealing with the rights of the institution, it must be recognized that the university is not the all-powerful monolith its attackers at times pretend it is. It is an institution thriving on decentralized initiative, with a central administration that has limited power but increasing responsibilities. There is a real danger that ignoring the rights of the institution in order to safeguard the rights of the individual faculty member may have a result opposite from that intended: it may lead to more attacks on the rights of other faculty members and more, rather than less, concentration of administrative authority. In a very real sense the university is the totality of its constituents—damage suffered by the university works directly to the detriment of its individual members.

There is thus a needed balance among three interests; those of the faculty member accused, those of the other members of the academic community, and those of the university as an institution. But there is a fundamental consequence of this balance of rights. While it is the consensus within the university that it should have room for the widest possible range of perceptions and expression, the university says in fact to its members: "You may preach and also practice . . . but only up to a certain point."

The latter edict is not aimed exclusively at those on the far political left, who often complain that they are the only ones being discriminated against when told that a theoretical espousal of their position is permitted so long as it does not spill over into action. It is also applied at many other points along the socio-political-economic spectrum within the academic community. For instance, the university protects the right of a professor to espouse views that suggest a demeaning relationship between racial background and intelligence, but it would not permit him to organize a forcible attempt to prevent the Admissions Office from accepting black applicants. It would allow a fascist professor to advocate abolition of democratic processes, but would not let him interfere with the conduct of university exercises dedicated toward the exposition of democratic institutions. Common to these examples is the institutional decision that while those further toward the center of the political spectrum may practice what they preach, those at its extremes may preach but are limited in their practice. From Professor Franklin's viewpoint, this is an unfair asymmetry. The majority of the community would point out that in any even-handed balancing of rights, the encouragement of violence constitutes an infringement; to Professor Franklin the balancing of rights appears insufficiently global. Because he makes the need for incitement a political credo, a prosecution for the advocacy of imminent lawless action becomes to him a political persecution.

These descriptions do not solve the problem; they only help to identify it. We cannot simultaneously rededicate the university to a specific political goal—by using force or violence if necessary—and at the same time preserve it as an institution in which independent initiative from many quarters can have the widest possible play. A choice must be made and we choose the latter. Yet having made this choice, the university can contemplate punishment of action—and most especially, of speech—only when the rights claimed by the dissidents seriously infringe those of other groups or individuals within the university. Punishment should follow only when strongly persuasive evidence has been developed that such infringement has actually occurred.

E. Guidelines for severity of sanction

1. *Modifying Circumstances.* On the basis of the above considerations we are prepared to consider as mitigating issues of motivation, overriding necessity, and a variety of factors that may be understandable within

Professor Franklin's framework of convictions but not within our own or those of most of our colleagues. At the same time we are prepared to consider as justification for a relatively more severe penalty a pattern of conduct which systematically threatens the university as an institution in which decentralized individual initiative can have the widest possible range.

However, within this balanced input we believe that in case of doubt, those criteria that are external to the factual fabric of the charges should be applied asymmetrically in favor of the defendant, since (1) such matters were not taken into account in findings of fact, (2) the perceptions of reality held by the Board are generally more shared with those of the Administration than with those of Professor Franklin.

2. The Purpose of Sanction. The purpose of sanction can be to retaliate, to rehabilitate, or to deter further violations. We hope that in a university setting only the last two deserve consideration; and we must ask what importance to attach to each.

We are highly dubious whether *rehabilitation* is a useful concept in this case. Professor Franklin's announced convictions about the guilt of the university appear deeply-held, and his opposition to the institution in its present form seems implacable. We believe him when he expresses his regret that his role in converting the university to "serve the people" is restricted by practical reasons to advocacy rather than action. "Rehabilitation" might appear to Professor Franklin as a highly unfair mandate to change his convictions. Barring a dramatic change in perception he is unlikely to change his conduct; thus "rehabilitation" is likely to fail, whatever the sanction.

It can be argued in contrast that the *deterrent* function of penalty has real force. By setting a price on proscribed conduct, the university can make its members consider carefully the line that separates forbidden from permitted speech and action, and avoid crossing that line. In establishing a penalty, the institution in effect announces the degree to which it is attached to its own values. Such an announcement insists that persons considering borderline conduct must locate the border; for when there is no deterrent to illegal acts, it hardly pays to have a law.

3. The Range of Possible Sanctions. Dismissal severs the connection between the defendant and the institution; a lesser sanction assumes that a satisfactory relationship between Professor Franklin and the other members of the university can be re-established. In considering the appropriateness of a lesser penalty, we must thus consider (1) whether it will actually deter, and whether deterrence is a reasonable expectation at all; (2) whether it appropriately announces the institution's attachment to the value measured.

There is no absolute way of defining the deterrent value of penalty. Some professions (and some people) are especially sensitive to economic sanctions, others to censure. If that proposition is granted, a certain finding of fact can still justify a range of penalties that differ in kind as well as in severity. Between mere censure and dismissal there is an intermediate range of possible sanctions that is populated primarily by such mechanisms as suspension (with or without pay) and probation.

We do not hold probation to be workable. Where such a right as tenure is involved, probation merely challenges its authenticity; and probation is too often an excuse for the removal of due process. Suspension is another matter, and encompasses three kinds of sanction. There is, first, the loss of privilege—to teach and to use the full range of academy's resources. Professor Franklin has already suffered—irreversibly—the penalty of suspension with pay since February 12, 1971; this is a long time, although he has con-

tributed substantially to its length. Second, suspension may also involve loss of salary. Finally, the imposition of any penalty, suspension included, produces a subtle but real change in professional status. Sanction imposed by a council of his peers would surely detract from the offender's standing in the academic community at large.

For all these reasons suspension without pay ranging from one quarter upward is a substantial penalty—in terms of financial cost, in terms of lost academic participation, and in terms of lowered professional status and consequent loss of mobility. Suspension of too great a length is not practicable, because at some point the defendant—whom we must assume to be economically vulnerable—becomes likely to be forced into irreversible occupational alternatives.

Dismissal is a penalty of undoubted severity because of its absolute effect upon the immediate institutional relationship combined with its impact upon employment opportunities elsewhere within and even outside the profession. The severity of dismissal as a penalty can be softened somewhat by a financial settlement which would permit time for the exploration of alternatives.

The more severe penalties are not in our view inappropriately matched to the gravity of the charges. Incitement to violent, coercive lawless action—however it may be modified in final judgment by any of the factors discussed above—is a heavy attack upon the institution of which Professor Franklin is a member.

ADVISORY BOARD DECISION

1. Findings on University Charges

The following numbered paragraphs of the "Statement of Charges" of the University Administration require a finding by the Board: 6, 7, 8, 9 and 10. Of these No. 6 does not involve Professor Franklin's conduct, but is sustained unanimously by the Board.

The findings of fact by the seven-member Board on those paragraphs involving Professor Franklin's conduct are as follows:

"7 The Lodge Incident

"The Board unanimously does not sustain this charge.

"8 White Plaza Rally

"The Board unanimously sustains this charge.

"9 Computation Center Incident

"The Board sustains this charge. Two members of the Board (Brown, Kennedy) do not.

"10 Old Union Courtyard Rally

"The Board sustains this charge. Two members of the Board (Brown, Kennedy) do not.

The violations sustained constitute, in the Board's judgment, "sustained and manifest neglect of duty or personal conduct substantially impairing the individual's performance of his appropriate function within the University community," and are therefore sanctionable under the *Statement of Policy on Appointment and Tenure*.

2. Sanctions

The Board has sustained Professor Franklin's culpability on three charges, unanimously on one charge and with two of the seven members dissenting on two charges. The University Administration argues that dismissal is the appropriate penalty for each of the three offenses.

We agree that each of the offenses is a serious one; since we find Professor Franklin culpable on three charges, we need not decide whether any one alone would justify dismissal. Taken together, however, the three offenses comprise, in our judgment, major violations of the professional responsibilities and duties of a professor in this University under the *Statement of Policy on Appointment and Tenure*, the *Policy on Campus Disruptions*, and the common traditions of this and other universities. Giving the fullest

weight to Professor Franklin's personal rights to advocate vigorously his political views, we are unable to escape the conclusion that by his conduct he repeatedly and seriously infringed the rights of others in the University, and significantly increased the risk of injury to them and to University property. He did so by urging and inciting to the use of illegal coercion and violence, methods intolerable in a university devoted to the free exchange and exploration of ideas.

In the preceding *Discussion of Sanctions*, all the members of the Board enumerated the factors which affect the choice of proper sanctions, once findings of facts are established. Accordingly, we considered possible mitigating circumstances as well as those circumstances which make Professor Franklin's behavior more unacceptable. We conclude that these roughly offset each other. On balance, they do not argue against what would otherwise be the appropriate penalty for such grave offenses. Nor do we doubt Professor Franklin's own testimony that he would continue the type of behavior charged here; indeed, he considered both his own and his political associates' behavior to have been "too weak" during some of the incidents covered by the charges.

The real issue in these hearings is Professor Franklin's behavior on the offenses charged, not his political views. Diversity of political views is a great asset to the University. The charges here, however, are incitement to use of unlawful coercion and violence and increasing the danger of injury to others as means to achieving Professor Franklin's goals; it is that behavior, not his political views and their expression, which we judge unacceptable. Indeed, we note with approval that others holding and expounding extreme political views are today highly respected members of the Stanford faculty. Our decision silences neither political dissent nor criticism of the University. The only speech or behavior repressed by this Board's findings is that which clearly urges and incites others to unlawful coercion or violence, or to acts likely to increase the risk of injury to other persons. We believe such behavior should be restrained; insistence on such standards of faculty conduct will not chill open and robust dissent on this or any other campus.

The Board is also critical of Professor Franklin's deliberate choice, demonstrated by action as well as by his testimony, to attempt to protect his own position as professor in the University while at the same time inciting others, including students, to expose themselves to expulsion or criminal charges.

Despite the severity of these offenses, we have weighed carefully possible sanctions short of dismissal. But a lesser penalty would fail to recognize the fundamental nature and severity of Professor Franklin's attacks on the University of which he is a member. Tolerance of such attacks on the freedom of others, under the guise of protecting Professor Franklin's freedom to act as he wishes, would be subversion, not support, of true academic freedom and individual rights. It is precisely because unlawful coercion and violence infringe upon the rights of others in the University that the charges against Professor Franklin are such serious ones.

We believe, given all these considerations, that immediate dismissal of Professor Franklin from the University is warranted. In view of the difficulty of developing alternative sources of income at this time, we recommend that a sum equal to Professor Franklin's salary until August 31, 1972, be paid to him.

Minority decision: Professors Brown and Kennedy

In determining the appropriate penalty given our own findings of fact, we have considered carefully the University Administration's argument that dismissal is the appro-

appropriate sanction if we sustain any of the last three charges.

The findings on the White Plaza speech on February 10th dictate, in our view, a serious penalty. Although we differ slightly about the relation between the earlier part of Professor Franklin's speech and its conclusion, we agree that his call to shut down the Computation Center, given its context and its position at the end of the rally, was clear and unambiguous. Its force is blunted only by the claim that it was, in a sense, an afterthought to the rest of the speech; but even as an afterthought it provided immediate impetus for a move to occupy a University facility. Our view of the offense is not substantially mitigated by Professor Franklin's attempt to convert the context of his instructions into one appropriate for a call to a "voluntary boycott" or "strike"—terms whose ambiguity is amply demonstrated in the testimony. Indeed, the unimpressive analysis of syntax that characterized Professor Franklin's defense on this charge left us wishing instead for an honest appeal to the urgency of outraged conscience.

Although we find this violation a serious one, we cannot agree that dismissal is the appropriate penalty for it. The following elements contribute to that view:

First, suspension is itself a severe penalty. It works substantial professional and financial hardships—substantial enough to provide a significant deterrent to Professor Franklin and others. It is therefore an adequate advertisement of the University's devotion to the principles under attack by Professor Franklin.

Second, Professor Franklin has stated his intention to be a non-participant in any action he supposes to be punishable. If he has correctly represented his feeling that in his case the line between permitted and proscribed conduct was vague to him, then surely the Board's emphasis on its position with respect to incitement will be informative. We can tentatively accept the proposition that for someone with a perception of reality different from our own, that line might have seemed blurred; but then we must also assume that the present clarification, coupled with Professor Franklin's announced determination to avoid dismissal, will be helpful in preventing further violations.

Third, while it is true that Professor Franklin's present ideological position will encourage further coercive acts against the University and that some of these will be unlawful, we cannot assume his position to be static. It can therefore not be argued conclusively that dismissal is appropriate merely because other penalties would be without effect.

Fourth, we would argue a careful weighing of the costs of dismissal to the University relative to the risks of future violations. These issues have been outlined in the preceding section. We here discuss those that seem to us especially important, in light of the fact that our own findings of fact could justify a range of penalties, perhaps including dismissal. (a) The University thrives on diversity and challenge. When we lose a prominent symbol of these qualities, we lose not only the substance of the challenge, but also the external perception that we can take it in stride. In some quarters, the latter effect could be damaging—for example, less well-buffered institutions may become more vulnerable to outside pressures to get rid of controversial faculty members. (b) Because we live in a society in which there are increasing public pressures to curb dissident speech and action, the University has a special responsibility to insulate its procedures from such influences. That need is magnified by the special significance of tenure, which historically protects the institution's faculty from social trends toward political conformity. We should therefore be

scrupulous in protecting violators of University rules against excessive penalties imposed by collective judgment, especially when those violators espouse uncomfortably heterodox views. (c) For all these reasons, the University is obliged to tolerate a great deal of what it does not like. We see substantial costs in Professor Franklin's loss to the institution; they are measured externally in the form of corrosive effects on academic freedom, and internally in terms of lost challenge and the subtle inhibition of dissent.

In light of these considerations, Professor Kennedy recommends that Professor Franklin's suspension be continued through the remainder of the current academic year and that his suspension be without pay for one of the remaining quarters; Professor Brown recommends that in view of the time Professor Franklin has already been suspended, his suspension be continued through the Winter quarter only, suspension for that quarter to be without pay.

Addendum to minority decision: Professor Brown

Since I found against Professor Franklin on only one of the four charges, it may seem gratuitous to discuss possible penalty had I found him culpable on any of the other charges as well. However, in view of the time and resources the University has asked us to devote to this hearing, and the gravity of the issues posed, I consider it both appropriate and necessary as a member of the Board to address myself to the question.

I strongly urge the University administration and the Board of Trustees to consider once again, before taking final action, whether a dismissal penalty does not represent a higher cost than the University ought to pay. My departure from the majority, in addition to a different finding of fact, focuses on the difference between the majority's belief that possible mitigating factors tend to be cancelled out by Professor Franklin's ongoing pattern of conduct, and my belief that there are certain mitigating factors that should be given proportionately greater weight. The four elements of the argument against dismissal made in the minority decision can additionally be offered as mitigating factors even in the face of a more severe finding of fact, and I urge that they be re-examined in that context before a final decision is reached.

There are three points I wish to emphasize more strongly than does the report as a whole, which I believe militate against dismissal as an appropriate penalty:

1. While I acknowledge with the majority that the University is more fragile than its attackers or defenders often realize, I put greater stress on the need for the University to be the scrupulous, even over-zealous, champion of the rights of the individual. The University whatever its vulnerabilities, has many champions at work defending its interests. The individual, on the other hand, particularly if he espouses unpopular beliefs, is not so amply blessed with supporters. He will inevitably have tougher going and therefore needs a special degree of championing. This is particularly important in the area of speech; for speech that goes "up to the line" of what is permissible is extraordinarily important speech both to the university and to society, since it is through such speech that new insights are often born. If there is the slightest possibility that an individual, called to account for speech that transgresses permissible boundaries, will more clearly respect such boundaries in the future, he deserves to be given that chance. A severe penalty does not deny him that opportunity, but dismissal does. In a matter as crucial as this, I put great stress on the point made in the *Discussion of Sanctions* that the balancing of probabilities should be tipped in favor of the individual; I believe it is the business of the University to be the community where the

balances are so tipped. If such a stance makes the University fragile, it is equally true that such a stance makes the University strong.

2. Although the Board's joint *Discussion of Sanctions* indicates that one's perception of reality could be a mitigating factor, I place more weight on this than does the majority. Even though Professor Franklin did not choose to develop this point in a systematic way in his defense, it is clear from the testimony that his indignation at many injustices that he sees in the world inevitably leads him to vehement attack on those whom he considers the purveyors of injustice. When we describe his speech and manner as angry or strident, we must not forget that from his perception of reality there is a great deal to be angry and strident about. Indeed, we must acknowledge that his perception of reality colors his own definitions of what constitutes his "appropriate functions within the University community," leading him to seek for ways to acquaint his hearers with the reality of police oppression in the ghettos, the committing of war crimes in Southeast Asia, the immorality of certain kinds of war-related research, and so on. While we can properly demand, by a severe penalty, that his speech and action not circumscribe the rights of others, we must recognize that the penalty of dismissal would deny him a chance to apply his own perception of reality within boundaries of permissible conduct that may now be clearer to him.

3. There is a final point we may not ignore. This is a recognition that many aspects of the University need to be changed. Those of us within the University share responsibility for many of the evils of our society, sometimes by our neglect of means for bringing about change, and sometimes by our tacit if not overt approval of the involvement of the University and University personnel in ongoing social structures of human oppression. Albeit in a harsh and strident manner, Professor Franklin has helped to call attention to many of these realities. He has not been alone, of course, in doing this, and others may have joined the issues more effectively and creatively than he has done. But his has been an important voice, however uncomfortable it makes the rest of us. Dismissal would deprive us of that voice, whereas a penalty short of dismissal would not do so unless Professor Franklin chose in the future to disregard its warning.

I believe very strongly that, however, much I and many of my colleagues may disagree with what Professor Franklin says or how he says it, Stanford University will be less a true university without him and more of a true university with him. I fear that we may do untold harm to ourselves and to the cause of higher education unless, by imposing a penalty short of dismissal, we seek to keep him as a very uncomfortable but very important part of what this University, or any university, is meant to be.

SUMMARY OF ADVISORY BOARD REPORT

A. The proceedings

President Lyman on March 22, 1971, preferred charges against Associate Professor H. Bruce Franklin under Stanford's *Statement of Policy on Appointment and Tenure*, indicating his intention to dismiss Professor Franklin on the basis of these charges. Pursuant to Paragraph 15 of the *Statement*, Professor Franklin requested hearings on the charges before this Advisory Board, composed of seven faculty members elected by the entire Stanford faculty. The hearings covered the period September 28 to November 5, 1971. Final briefs were filed by both parties on December 17, 1971; the Board has also received numerous written statements from other interested groups and individuals.

The following pages summarize briefly the charges against Professor Franklin, the standards used by the Board, findings of fact on

the charges, considerations concerning possible sanctions, and the decision of the Board as to the appropriate penalty. In accordance with the *Statement*, this report has been transmitted to the President of the University.

B. The charges

In summary, the four charges against Professor Franklin are:

1) On January 11, 1971, Professor Franklin intentionally participated in, and significantly contributed to, the disruption of a scheduled speech by Ambassador Henry Cabot Lodge. Such conduct prevented Ambassador Lodge from speaking, forced cancellation of the meeting, and denied to others their rights to hear and to be heard.

2) On February 10, 1971, a war-protest rally was held in White Plaza. At that rally Professor Franklin urged the audience away from tactics aimed at influencing government policy off-campus. Instead he urged and incited students and others to disrupt University functions by shutting down the Computation Center. Subsequently a shutdown was effected by an unlawful occupation of the Center.

3) Following the unlawful occupation of the Computation Center, Professor Franklin significantly interfered with orderly dispersal in response to police orders by intentionally urging and inciting students and others to disobey the orders to disperse.

4) Following these events, during an evening rally in the Old Union Courtyard Professor Franklin intentionally urged and incited students and others to engage in disruptive conduct which threatened injury to individuals and property. Acts of violence followed.

To establish culpability on the conduct charged, the Board required as standard of proof that *strongly persuasive* evidence be furnished.

C. Fundamental issues and standards

The Board held the following principles to be applicable in resolving the issues before it:

1) Rigorous standards of due process should be met by the hearing and associated procedures, but these need not be modeled specifically after the criminal (or any other external) standard. The University context, whether state or private, is a special one.

2) Similarly, standards for the judgment of what speech or conduct may properly be regulated may or may not correspond to those in effect in particular external legal systems.

3) Regulations should not be vague, since a vague regulation may leave a person in doubt about what conduct is permitted; nor overbroad, since an overbroad regulation prohibits conduct which the Constitution guarantees as well as conduct which the institution may legitimately regulate. In the University setting, the identification of proscribed conduct is partly a matter of tradition and partly codification. The Board believes that the concepts of "appropriate function" and "duty" in the *Statement of Policy on Appointment and Tenure* do reflect commonly understood and accepted standards of conduct, including restraints as well as positive obligations. We also affirm that the *Policy on Campus Disruptions* provides an explicit though not exhaustive list of conduct which is proscribed under the *Statement*. We thus do not accept the contention that the rules and understandings governing faculty conduct are vague or overbroad.

4) Advocacy is punishable, if it is directed to inciting or producing imminent lawless action, and is likely to produce such action; lawless action here refers to conduct proscribed by state or local laws, by the *Policy on Campus Disruptions* or other campus regulations, or by commonly-held understandings in the University community. Advocacy is also punishable if the advocate knowingly increases the likelihood of injury to persons.

D. Findings of fact

1. Lodge Incident

The Board accepts as accurate the University administration's contention that the speech to be delivered by Ambassador Lodge was disrupted to such a degree that it was reasonable to cancel the meeting before the speech could be given. This contention does not directly connect Professor Franklin with the events that are the subject of the charge; accordingly, his personal culpability is not demonstrated by the Board's agreement with this description. The Board finds strong evidence, however, that a large number of those in the audience denied others the right of speech, hearing and assembly on this occasion, and considers such actions destructive to the fundamental values of the University.

The Board does not, however, feel that it has been presented with strongly persuasive evidence that Professor Franklin's conduct included "chanting and clapping" as specified in the charges. He did engage in "loud shouting" on at least two occasions when the rest of the audience was quiet, and possibly at other times as well, but there is not strongly persuasive evidence that Professor Franklin participated in the kind of disruptive conduct charged, in particular while Ambassador Lodge was at the podium. Accordingly the Board unanimously holds that the specific charges against Professor Franklin in connection with this incident are not sustained.

2. White Plaza Rally

At the White Plaza rally at noon on February 10, Professor Franklin gave the concluding speech. It was followed by an illegal occupation of the Computation Center by several hundred persons, many of whom had attended the rally. The occupation posed a grave danger to the facility and the research projects that depend upon it; there were no explicit group understandings before the occupation to avoid damage to the machine or to stored data.

The Board considered the background that provides context for this rally and the events that followed it. These included the invasion of Laos, resulting in protests of various kinds on the campus, and a rally the evening before in Dinkelspiel Auditorium. At that rally, which was attended by Professor Franklin and many of the Computation Center occupiers, the vulnerability of computers was discussed and the Center was selected as a tentative target for the next day.

In light of this background, Professor Franklin had reason to expect that his speech was given to an audience already prepared for illegal actions. At the conclusion of his speech he said: "See, now what we're asking for is for people to make that little tiny gesture to show that we're willing to inconvenience ourselves a little bit and to begin to shut down the most obvious machinery of war, such as, and I think it is a good target, that Computation Center."

The Board does not accept Professor Franklin's argument that he was in fact discussing a "strike" or a "voluntary boycott"; that was not the main tone of the discussion at the previous rally, nor is it consistent with the preparations for action. The Board is thus strongly persuaded that, given the context of the speech, Professor Franklin did intentionally incite and urge persons at the White Plaza rally to occupy the Computation Center illegally. We therefore unanimously sustain the University administration's charge regarding this incident.

3. Computation Center Incident

After the Computation Center had been illegally occupied for about three hours, during which time some damage had occurred and the occupiers had refused University requests to leave, police declared the occupation unlawful and ordered the demonstrators to disperse. After police had cleared the building, many persons were moving away

from the building, as ordered, but some, including Professor Franklin and other members of the "movement," stayed immediately in front of the police line near the building, protesting the order to disperse. When a police official denied Professor Franklin's protest, Professor Franklin strode into the crowd, denying the legality of the police order to disperse and shouting at Professor Moses to stay as a "faculty observer." Professor Franklin testified that he believed a police charge and arrests were almost certain under the circumstances.

After urging Professor Moses to stay, Professor Franklin then returned to confront the police officer in charge; he testified that he addressed only the police officer and he denied urging or inciting anyone else to remain. But at least three witnesses testified specifically that as he turned away from Moses, and with numerous demonstrators between him and the police 40-60 feet away, Professor Franklin was urging the crowd to defy the police order. Professor Franklin produced no witnesses who directly contradicted this evidence; most of his witnesses were close to the police line and could not observe his actions during this period. Indeed, five of his own witnesses contradicted his version of the spatial relationships. As Professor Franklin returned to the police line, others returned with him, and the general dispersal of the crowd was reversed. Following a further brief, angry confrontation between Professor Franklin and the police, an attempt was made to arrest Professor Franklin, and the police line charged, dispersing the crowd, with arrests and minor injuries to some persons.

We conclude that the police order to disperse at the Computation Center was clearly reasonable. We find the evidence strongly persuasive that Professor Franklin did intentionally urge and incite others to disobey the order to disperse, thereby increasing the danger of arrest or injury to those present, a risk of which many were unaware. The Board therefore sustains this charge.

Professors Brown and Kennedy, while agreeing that Professor Franklin's behavior may have induced members of the crowd to stay, do not find the evidence strongly persuasive that he intentionally urged and incited them to do so, and therefore do not sustain the charge.

4. Old Union Courtyard Rally

On February 10, 1971, about 350 people attended an evening rally in the Old Union Courtyard. Speakers debated demands and tactics. The situation was tense: there was resentment toward the war, the police, and the University; the occupation of the Computation Center and the police charge had occurred that afternoon; the preceding four days had been marked by arson, false fire alarms, fire bombing, breaking of windows, bomb threats, fighting between demonstrators and other students, disruption of the Trustees' meeting, and occupation of the Old Union.

Professor Franklin made two speeches at the rally. His first speech, emotional and intense, linked the struggle at Stanford with the struggle in Southeast Asia. He drew parallels between the occupation army on campus and imperialist forces in Asia. His briefer second speech, in which he urged action that night to bring more police on campus and thereby relieve police pressure on the ghettos and barrios, was the last speech at the rally. There is substantial agreement between Professor Franklin and witnesses for the University administration as to the content of the second speech. Professor Franklin said that militant action in large groups would be suicidal, given the number of police on campus. He urged responding with "the methods of people's war." Professor Franklin said that he "ended by telling people that people's war meant that they should go back to the dormitories, organize

people into small groups, and talk with them, or play football, or whatever, as late into the night as possible." Violent acts followed.

Professor Franklin must have known that the circumstances under which he spoke involved a high risk of subsequent violence. He urged responses to the police and the University at many levels of action. His speeches sought to generate further hostility toward these targets and, with deliberate ambiguity, he urged immediate retaliation against them by both legal and illegal means. The specific tactics to be used were left to the judgment and imagination of each individual and small group. His message included a general call to employ immediately a range of action including violent and illegal behavior.

The Board is strongly persuaded that Professor Franklin intentionally urged and incited his audience to engage in conduct which would disrupt activities of the University community and threaten injury to individuals and property; it therefore sustains the charge.

Professors Brown and Kennedy, while agreeing that the situation was one of risk, place a different interpretation on the context of Professor Franklin's speeches. They do not find the evidence regarding the content of his second speech sufficient to sustain the charge.

E. Sanctions

The Board has considered various elements that might enter the consideration of penalty, given a finding of fact that would justify a range of substantial sanctions.

Professor Franklin engages in a pattern of conduct that constitutes a continual challenge to the institution: he states that he wishes to encourage violent and coercive actions, but at the same time not to risk the loss of his position in the University. This pattern of conduct, however, is guided by a set of perceptions which differ markedly from those of most faculty members: Professor Franklin views the University as a central agent in domestic repression and in an imperialist foreign policy.

These facts make it necessary for the Board (1) to consider carefully what implications Professor Franklin's pattern of conduct may have for the efficacy of various possible penalties, and (2) to enter as sympathetically as possible into the perception of reality he espouses, so as to make a fair evaluation of such mitigating factors as necessity and sincerity of conviction.

In applying such considerations, it is important to balance Professor Franklin's rights as an individual against those of others in the University upon whom his conduct may infringe, and against the functional integrity of the institution. Where there is doubt, such external considerations should be applied asymmetrically in Professor Franklin's favor.

The Board considers probation and very long suspensions to be unworkable. The range of penalties from one quarter without pay to dismissal encompasses substantial penalties, but in the Board's view that range is justified by the gravity of the charges.

F. Decision

The Board, having sustained the University administration's charges involving the White Plaza rally, the Computation Center incident, and the Old Union rally, believes that immediate dismissal of Professor Franklin from the University is warranted. The Board recommends that he be paid a sum equivalent to his salary until August 31, 1972.

Professors Brown and Kennedy dissent from this recommendation, having sustained only the University administration's charge involving the White Plaza rally. They recommend that Professor Franklin be suspended for one quarter without pay; Professor Kennedy recommends an additional quarter of suspension with pay to extend through June 1972.

Professor Brown has appended an argument against dismissal even if all charges are sustained.

Donald Kennedy,
Chairman.
D. A. Hamburg,
Vice-Chairman.
G. L. Bach.
R. M. Brown.
S. M. Dornbusch.
D. M. Mason.
W. K. H. Panofsky.

APPENDIX I

Transcript of Professor Franklin's main speech at Dinkelspiel auditorium on the evening of February 9, 1971

Yeh, I mean, I think that the demand "U.S. out of Southeast Asia" now is, I mean, the heart of it. But the point that the woman from Columbae House raised before is, I think, a key question in what demands we formulate, to whom do we make these demands, and what do we do about them? And you see, I would take almost precisely the opposite view from the position she takes about the relationship between Nixon on one hand and the Board of Trustees of Stanford University on the other. This is not Nixon's war and I don't quite understand why we have so much trouble registering that fact. It is not Nixon's war any more than that it was Johnson's war or Kennedy's war or Eisenhower's war. This is a war waged by the Board of Trustees of Stanford University and, and the other people of that social class. *KZSU interruption:* To catch you up with what's happening, we previously had a speaker who stated his opinion that this meeting should only have one, that's one, demand, that demand to be that the U.S. be removed from Indo China. All other demands would give students an opportunity to become apathetic. Right now the speaker is Bruce Franklin and he's speaking against the substitution of the single demand of "U.S. Out of Southeast Asia" and pointing out that the war is not Nixon's war and that the war is not a mistake. The war is being waged by Stanford trustees.

You see the power in United States society and that decision-making power rests in the hands of the giant corporations. Those are the powers that run Stanford University and they can't and they don't make those decisions just inside each corporation. They get together in such institutions as the Board of Trustees of Stanford University. The design of the Pacific Basin empire of which the Southeast Asia war is just part, that was worked out here. [Applause.] The interlocked empire of the Pacific Basin is represented on that Board of Trustees of Stanford University and we've been putting out research on this for years. I mean, the thing the other night, the trial of Lodge, put forward a lot of new facts and I think that, you know, there was an assumption there that people were familiar with the interlocked role of all of these giant corporations. Now, see that's a very important thing because, because if we don't understand that, then its true, there's no logic in a strike. You know, why in the world would we strike the University? The University, that's just the University and the real decisions are made by the government. That's what most people think now. That's true. Why would we strike? Why would we do anything on the University? See? So why the hell, why the hell would we even have a movement here? See, but that raises another question. Is why do we have a movement here? And the movement didn't fall out of the sky. [Laughter.] Probably the main reason that there's a movement on the University is because there is a consciousness that this is true. And that people have been discovering this over a period of years. Now to say that most students didn't now understand that, that's also true. And therefore, it seems to me clear that one of our main jobs is to bring that

understanding and that consciousness of what is true to those people out there and to get rid of the ideas that they have, that policy is made because Nixon has a war personality or some insane idea like that. Now, I think that it would really pay if we were to have say, I don't know, 20 minutes of discussion, on this point. I don't think it's anything that we can vote on. But I do think that there are people here in this room who have a knowledge that they should begin, to begin with, bring to the other people in the room. So that at least we can have some kind of unity of will here and can be able to act in some kind of effective way. If the people from Columbae and so forth can persuade us that the University is just a, you know, vaguely associated with the war, and that the real architect of the war is Nixon, then I'll be perfectly happy to go out with him and lie down in front of trains or whatever. On the other hand, I think that if we can convince people that this is a prime seat of power, and a center of that Pacific Basin empire, then it follows that we ought to take some very effective action here on the University. [Applause].

APPENDIX II

Transcript of Professor Franklin's speech during the noon hour on February 10, 1971

People are complaining about the meeting going on a long time. [Laughter from the audience] But, you know, you see I think that we could inconvenience ourselves for a few minutes considering what we're trying to do here. Now, there were some, there were some hot emotions at the beginning of the meeting when Bob Grant and Larry Diamond tried to subvert what we were doing. And I think a lot of people misunderstood where things were and what was coming down. Because they believed that they're really very sincere people and so forth. And not that we're some kind of lunatic who just has some private axe to grind; we being the radicals, the revolutionaries. The fact of the matter is that a lot of us were doing precinct work out in the community in 1964, and at that time we were opposed by the Bob Grants and Larry Diamonds of the world. We were called Traitors and Saboteurs of the war at that time. In 1965 the most radical act here was when 24 people stayed overnight in an all-night vigil at the fountain and people came down and beat us up and threw us into the fountain. In '60, in late '65 or early '66, when we had here the first act in the United States of open identification with the Vietnamese people, and a blood drive in North Vietnam, people threw garbage at us. Called us "dirty jew bastards" and "traitors" and so forth. And at every point, you see, when the movement was being built, there have been people who have come out to talk about the tactics alienating the vast mass of people and we understand where that's coming from. Now they come out here and tell us that we shouldn't be doing anything on the University. We should be going into the community. We're the last ones in the world to oppose doing anything in the communities. The fact of the matter is that most of our comrades are working full-time in the community 'cause they come from the community, and they're brown and black and white working-class and poor people. And, see, there's a very extreme form of false consciousness that's created on a university campus. Because we get the illusion because there are a lot of people gathered here that this is a, this is the most advanced opposition to the war. But that poll that was cited, it wasn't a poll of people who were in favor of the McGovern-Hatfield Amendment. They don't know what the — that is. It was a poll of people who want to get out of Southeast Asia right now and that poll, which is, and remember it was a poll of people over 21, and mostly white, but that poll showed something.

And that is that 60% of those people with

a college education wanted to get out of Southeast Asia now. 70% of people who only have a high school education want to get out of Southeast Asia now, and 80% of people with only a grade school education want to get out of Southeast Asia now. [applause] . . . so want to talk about, about high consciousness, high consciousness is the consciousness of the people most oppressed by U.S. imperialism, which includes as a main institution of that Stanford University. And that's why whenever people from that community, whenever poor working class youth from that community, get a chance to come on the campus at Stanford and do a little material damage, they are very eager to do so. Because they recognize what Stanford University really is, even if people here don't. Now, see, what the question is, the question of what we do. Now people get up here and talk about workers striking, and the important thing is for us to go out into the community, and tell the workers to strike. Well, that, I mean, it's true that, that the workers have the ability in the long run to bring the war to an end. The war that started with the extermination of the Indian people and black people, and Mexican people, and went on to the point where extermination of people in Southeast Asia. Yes, it's working people who can do that if they strike. But to ask us, for us to ask workers to risk their chances to survive, to physically survive, by really striking, when we can't do a kind of fake strike, is to stand the world on its head. [applause]

Well, when we talk about, see we're just ripping off that term strike when we talk about striking at Stanford. This isn't a strike. We're not risking anything. It's a voluntary boycott. A shutdown of some of the University as a demonstration of something. Now, now what we called a strike last year, and it lasted really about three days and it kind of dragged on, and, you know, in an odds and ends way and some people did it. But just the fact that we were able to move our little finger that much, that electrified the working people of this area. That's a fact and the people who were down there on that picket line, down at shipping and receiving, knew that practically every single truck driver who came there when he saw us on strike said "Okay". He was prepared to risk his job and turn that truck around. And in four states, four states, teamsters linked up concretely with student strikers and said that they would strike if the students were willing to strike. And factory workers were walking out. And the day after that we called that strike there was a record absenteeism of all factories in the Bay Area. See, now what we're asking is for people to make that little tiny gesture to show that we're willing to inconvenience ourselves a little bit and to begin to shut down the most obvious machinery of war, such as and I think it is a good target, that Computation Center. [applause] [Shouts of right on. . ."]

APPENDIX III

Transcript of Professor Franklin's first speech at the Old Union Courtyard on the evening of February 10, 1971.

First of all I want to say that I think that was a premature vote. And I certainly think that we should have a revote. I think this is a very important discussion that we're having now, particularly because. . .

KZSU interrupts: You are now listening to Bruce Franklin.

FRANKLIN (continued). There are people here tonight who are new to the movement and there are other people who have been in the movement a long time. Now, I would like to ask of those people who voted, that free all political prisoners should not be one of the demands. I would like to know how many of those people have ever been in jail?

KZSU interrupts: No one raising their hand.

VOICE in crowd. Why?

FRANKLIN (cont'd). Now I would like to assure you, see that, if you're in jail that can be a very lonely experience. And if you're in jail because you've been fighting for the people, if you realize that those people were then abandoning you and saying well, you know, somehow cut into our support, if we make your freedom one of our demands, you would feel betrayed. And I would like to say to the people who are new to the movement that what this movement is all about is brotherhood and sisterhood and love of people for each other, and we love those political prisoners. We know that they're in jail for us, that they're part of our struggle. So we wouldn't be out here tonight if it hadn't been for them. [applause]

KZSU interrupts: In case you just joined us, there are approximately 350 people here at the Old Union Courtyard. Bruce Franklin is currently speaking. A contingent of 100 persons from Roble Hall came down here in a group to represent their views. It was their belief that the demands of the demonstration should be limited to ending the war in Indochina and to drop the demand of freeing all political prisoners, which is currently one of the three demands held by this group through which their strike is being based and represented by. There was a vote to change the demands to limit to just one, that being—get U.S. out of Indochina. The vote was defeated, voting to maintain all three demands. Then a representative from Roble got up and said that he and his hundred fellows did not believe that the demands should be maintained as all three but limited to just the first, and now Bruce Franklin is trying to defend his point of view that freeing all political prisoners should be maintained as one of the demands of the group, and now back to Dr. Franklin.

FRANKLIN. . . and we can't betray them. And another part of this is, we can't say, we can't separate the war in Southeast Asia from the war at home. We can't turn our backs on our black brothers and sisters here at home who are part of this struggle and who are today, not us, they are the ones who are the vanguard. And we get very upset when we find our beautiful campus crawling with pigs who stop and harass people and tip off and beat half of the people. Well, this is just a very, very mild taste of what life is like in the black and brown communities of this country, where the pigs come by every night, and if you're young, if you're black and brown, they stop you and ask your I.D. and rip you off for suspicion of burglary and where there are dogs there, and where there's a helicopter overhead, and that's part of the same struggle. And the Black Panthers—and where they shoot you. And the pigs are here tonight. Those San Jose pigs have just murdered a black brother in San Jose. Right, the same San Jose pig just murdered a black brother down in San Jose and that's normal life down there. People murdered in the streets and that's why we call them pigs. Although it's a little unfair to the four-footed variety, because they don't do that kind of thing. [applause] Now the real leadership of our struggle is the Black Panther Party, and the reason that they are the leadership is because they represent the most oppressed people in this country and because they have shown in theory and in practice that they are leading our struggle. And the Black Panther Party is now teaching us a new concept, a new word, and that word is called intercommunalism. And the Black Panther Party teaches us that the people of Laos and the people of South Vietnam are not another separate nation state, that they are our brothers and sisters because they are just other oppressed communities of the same empire. The Black Panther Party

teaches us that today, while this meeting was going on, brothers and sisters, blood brothers and sisters of us, were killed in Laos, in Vietnam and Cambodia, in the black and brown communities of the United States of America. They teach us this is all one struggle and the interconnections are every place. Even if you think about what Laos is all about; what is the chief cash export of Laos, who knows? Crowd: Opium, heroin? Franklin: Opium, all the heroin on this coast comes from Laos. It's all brought in by the C.I.A. It is grown and harvested by Meo tribesmen and flown out on Air America, the C.I.A. airline. And it is brought in to this state as part of the oppression, particularly of black and brown people here, but also of white youth. . .

KZSU interrupts: This is Bruce Franklin speaking now. He's now discussing what he believes the motives are for the war in Laos, in Indochina and, according to him, so the C.I.A. can bring hard drugs, such as heroin, into this country to be given to the minority groups to further oppress them, in his words.

FRANKLIN. And is just as much a part of the counter-insurgency system as the pigs are war on this campus. So the war in Laos is not a separate thing that we can separate out, and it's necessary that there will be some people who will not participate in the actions somehow because there are those other two demands that Stanford get out of the war and that all political prisoners be freed. I think that's too bad. I don't think there will be that many people, but I don't think, say, that we should just forget those people, I think we have an absolute obligation to go out to those people and teach them what we have learned in the course of this movement. But just on a practical level, let me say one other thing. That last year after the same kind of struggle we raised these very same demands and had a student strike all over this country, and it was a strike that was on such a high level for a student strike that large numbers of workers began to join that strike because they understand what this is all about. And I think that if people disagree with any of these things that I have been saying, or other people have been saying, they should get up there and we should discuss it, and it's worth the time that it takes to struggle this out. Power to the people. [applause, shouts of "right on."]

PRESIDENT LYMAN'S REPLY

(Following is the text of a Jan. 8 letter from Stanford President Richard W. Lyman to Robert Minge Brown, president of the Stanford Board of Trustees, accepting the majority decision of the Advisory Board.)

I have received and had the opportunity of reviewing the decision of the Advisory Board on the charges brought by the University against Professor H. Bruce Franklin. I must now report that I accept the decision of the majority of the Advisory Board that Professor Franklin be dismissed from the faculty immediately and that a sum equal to his salary until August 31, 1972, be paid to him. In so doing, I call your attention to paragraph 15 (b) of the "Statement of Policy on Appointment and Tenure at Stanford University," which requires the concurrence of the Board of Trustees before such a decision as this can become effective.

In reaching the above conclusion I have given full weight to the fact that the Advisory Board found in Professor Franklin's favor on the first of the four charges and that on the third and fourth charges, as well as on the sanction, two members of the Board dissented. I believe, however, that the Board's findings against Professor Franklin on the charges arising from the events of February 10, 1971, are wholly persuasive. The dissents on charges three and four do not, in my view, undermine the conclusions of the five-man majority on matters of fact or motivation.

I wish to call special attention to an issue

addressed by both the majority and the minority of the Board, namely the effect of this decision on free speech and academic freedom at Stanford and at other institutions of higher education. It is significant that the issue was a salient one for all members of the Board, and I have given particular thought to the fact that his concern weighed so heavily in the conclusion of two men whom I know to be as devoted to this University as are Professors Brown and Kennedy. Yet I am convinced that no fair and careful reading of the record of this case will provide comfort for any who may be tempted to use it as a precedent for an attack on the freedoms essential to an academic institution. Chief among these is, of course, the freedom to hold and advocate whatever views one's conscience and knowledge may lead one to have, no matter how unpopular or disturbing to orthodoxy or downright outrageous those views may appear to others, and no matter how large may be the majority that dislikes them. Professor Franklin, in common with all other members of the Stanford faculty, has long enjoyed that freedom. The decision of the Advisory Board rests on the conclusion that on specific occasions in particular circumstances his speech exceeded permissible bounds by "urging and inciting to the use of illegal coercion and violence, methods intolerable in a university devoted to the free exchange and exploration of ideas." My agreement with that conclusion is buttressed by the knowledge that the minority dissent is based on disagreement over the interpretation of fact and motive and over the appropriateness of penalty, not in a finding that the University's intention or action in bringing the case was directed against the right of a faculty member to believe and to espouse unpopular views.

The dismissal of a tenured faculty member is an act with few precedents. Even thought in this case the procedures prescribed in the "Policy on Appointment and Tenure" have been followed scrupulously, and the faculty has acted through its own elected representatives with the fullest due process, there is bound to be shock and uncertainty in the minds of many when the result is a decision for severance. That persons of integrity should differ in predicting the consequences should surprise no one. Clearly no one can speak with complete confidence about future events at other institutions; what can be said with confidence is that the present decision provides no legitimate basis for assaults on the essential rights of faculty anywhere. We can speak more certainly about the future of our own institution. If any person doubts that the future of Stanford will include the full measure of openness to the expression of the widest variety of views he must read in full the report of the Advisory Board. That report in all of its parts is firmly grounded in a broad conception of free speech, a high standard of proof, and a scrupulous regard for the procedural rights of faculty. I am satisfied that we can ask no more and I therefore concur in the decision presented to me.

[From the New York Times, Jan. 11, 1972]

PROTECTING STANFORD'S FREEDOM

The recommendation by a seven-man faculty advisory board at Stanford University that a tenured professor be dismissed for repeatedly inciting students to "the use of illegal coercion and violence" is a matter of utmost gravity for the nation's academic community. If the Board of Trustees follows suit, this would be the first such step by a major university in the context of recent campus unrest.

[Although the professor's defenders have predictably charged that the 5-to-2 faculty recommendation is a violation of academic freedom, massive evidence shows that it is

quite the opposite: a painful but necessary attempt to protect such freedom against coercion and disruption from within the academy.]

H. Bruce Franklin, an associate professor of English, has long and publicly encouraged students to commit illegal acts. He urged actions that threatened injury to persons, damage to property and interference with the lawful activities of other members of the community. He has in effect cried "fire" in a crowded theater. His conduct has been cowardly as well as irresponsible, manipulating students, endangering their own safety and damaging their future careers. It makes pawns of vulnerable young men and women, while the professor as instigator seeks immunity behind the shield of tenure.

At no time has Professor Franklin's Maoist ideology been an issue. What is at stake is the university's right physically to protect itself. The senior faculty panel's painstaking deliberations, after six weeks of hearings of more than 100 witnesses, led to the unimpeachable conclusion that incitement to illegal conduct is "an abuse of power" rendered particularly serious when it ignores a teacher's responsibility toward his students. In a flagrant instance last February, a student occupation of the university's Computation Center followed Dr. Franklin's appeal for just such a take-over.

The panel's two dissenting members disagreed with the majority only with regard to the severity of the penalty. Their counsel of leniency might be supported had the offense been an aberration of momentary passion. But Professor Franklin's consistent contempt for the foundations of a free, rational and non-violent community was unmistakably reaffirmed when he responded to the faculty verdict with a call for "revolutionary counter-violence," while his wife "symbolically" stood by his side with a rifle.

A better symbol of the universities' determination to uphold freedom through self-government under law will be Stanford's notice that neither tenure nor inflammatory rhetoric constitutes a license for coercive and illegal action.

MATCHING FUNDS FOR ATTACK ON CRIME AND DRUG ABUSE

Mr. SPONG. Mr. President, the Omnibus Crime Control and Safe Streets Act of 1968 provided States and local communities with the tools they need to mount a comprehensive attack on crime and drug abuse. In most States, grants under this program have become the mainstay of the entire law enforcement effort.

Unfortunately, stricter matching-fund requirements which take effect July 1 threaten to choke off the progress that has been made in this field.

My own State of Virginia, for example, will lose \$14 million in LEAA entitlements over the next biennium unless some relief is granted. I am certain that many other States are in the same position and I would hope that there will be support for my amendment now pending before the Judiciary Committee.

Mr. President, the attorney general of Virginia, Andrew P. Miller, recently discussed this and other challenges facing Commonwealth's attorneys. Mr. Miller is in the forefront of the State's anticrime program and I commend his remarks to the Senate. I ask unanimous consent that Attorney General Miller's Williamsburg, Va., speech be printed in the RECORD.

There being no objection, the address

was ordered to be printed in the RECORD, as follows:

THE CHALLENGE FACING COMMONWEALTH'S ATTORNEYS

(An Address by the Honorable Andrew P. Miller, Attorney General of Virginia, Before the Commonwealth's Attorneys' Seminar, Williamsburg, Va., February 9, 1972)

This is a good opportunity for you to evaluate the job of Commonwealth's Attorney. You've probably been doing a lot of it already here at Williamsburg, since you're all here in a group.

There are two ways of looking at it. Some of you might justifiably say that you couldn't have picked a worse time in Virginia's history to be a Commonwealth's Attorney. Crime is increasing, and so is public pressure on you to do something about it. Many of you have found that you have neither the budget nor the facilities to do the job the way it should be done. Neighboring jurisdictions don't work together as they should to fight crime. Courts are overworked, jail facilities are inadequate, police departments are short-handed and underpaid, and unpredictable political cross winds ruffle your composure. You have a mandate from the voters who elected you, but they don't understand your problems. All they want are results. That's what they elected you for, and they're not likely to forget it.

So you could say that you're in hot water, or deep water. Or is it both?

But there's another way of looking at the shape you're in as Commonwealth's Attorneys in Virginia today. You have accepted an opportunity for public service at a time when the office of Commonwealth's Attorney has never been more significant to the welfare of the citizens of Virginia.

The fight against organized and other crime is your fight, and you are beginning to gain ground. In the decade of the 70's, the office of Commonwealth's Attorney is destined to become more clearly than ever before the command post of every locality's fight against crime. The Commonwealth Attorney himself will assume the kind of leadership which his predecessors were not called upon to provide. His decisions will be crucial, his needs will have to be met and his requests for cooperation will have to be honored—if the fight is to be successful.

I submit to you today that you couldn't have become Commonwealth's Attorneys at a better time, either for you or the Commonwealth itself. It will not be an easy time for you. You who are newly elected are going to discover, as others of you already have, that much is going to be expected of you. The climate of public opinion in the Commonwealth is undergoing a metamorphosis in regard to crime. Citizens in every locality are deeply concerned about the way in which Virginia is meeting this clear and present danger.

The drug traffic is responsible to a great degree. It has taken Virginia a long time to realize the extent of drug abuse in the Commonwealth. But now that it is clear that the drug traffic affects every area of the state, the public is beginning to react. Parents want assurances that their children will be protected and that those who traffic in drugs will be apprehended and prosecuted. And they are learning who does the prosecuting.

A graphic demonstration of just how concerned the public is about law breaking has been going on in my office since early last summer. I have received more than 6,000 postcards from Virginians who want to know what the Office of the Attorney General is doing to prosecute the peddlers of obscene movies and books. Some of you may have seen the cards, or the letter from an organization known as Citizens for Decent Literature which supplies the cards to persons on its mailing lists. Citizens for Decent Literature

ture asks that the two pre-addressed postcards in the letter be sent to Governor Holton and to me, and that a contribution be sent to the organization to keep up the postcard campaign.

This campaign by postcard is designed, of course, to generate public pressure on law enforcement agencies to prosecute the smut peddlers. In my reply to those who have sent the cards, I point out that responsibility for initiating prosecution rests with you, the Commonwealth's Attorneys of the various localities. I've advised the senders of the cards to consult you if they have specific complaints about violation of the obscenity statutes. Some of you may already have encountered persons who have received my letter.

The point is that this kind of stimulus to public indignation about crime in general is likely to appear more often.

Virginians want something to be done about crime, and they will expect you to do it. Our citizens are in a mood today for action. To them, Law and Order is no longer a vague concept, a hazily defined theme for the general welfare. It has become a necessity if their homes, their property and their lives are to be safeguarded in a time when respect for the Law is at an ominously low level.

Obviously, the job the public is beginning to demand that you do cannot be done alone. You will need help, help from law enforcement agencies, help from the General Assembly, help from the public itself and, whenever I can provide it, help from my office in Richmond.

This seminar—and the two which many of you attended last year—represents the kind of assistance which the Office of the Attorney General can provide. Hopefully, we may continue to schedule such seminars on a yearly basis, thus providing continuity to our effort to keep you up to date on new developments in criminal law and in prosecutorial technique.

While these seminars provide the kind of head to head exchange of information I hope will prove of great value to you, they occur only periodically. Clearly, there must be some additional sources of information available to you on a continuing basis. With that in mind, my office has undertaken a number of projects designed to keep Commonwealth's Attorneys and others in the law enforcement system fully abreast of developments throughout the year. You are familiar with some of them already, but I would like to take a few moments today to discuss them in detail.

By far the most important step we have taken is the establishment, with the aid of funds from the Law Enforcement Assistance Administration, of a Technical Assistance Unit in my office. The TAU, as we call it, is responsible for the planning and development of this seminar. It will have the responsibility for planning those to be held in the future.

The TAU's prime purpose is to provide assistance to Commonwealth's Attorneys, judges and law enforcement officers in a variety of ways. Two assistant attorneys general, Linwood Wells and Wilburn Dibling, with a secretary, comprise this compact unit. It is supervised by Deputy Attorney General Reno Harp, whom some of you may know as head of the Criminal Litigation Division of my office. The TAU came into being on the first of November last year, and it hasn't had a slack moment since.

Basically, its purpose can be described as twofold. It stands ready to aid with research in response to inquiries from all of you. And it seeks to provide information on developments in law, law enforcement, and the judicial process almost as soon as they have happened.

Its first success last fall was securing a federal grant to underwrite the cost of printing and mailing all criminal decisions of the

Supreme Court of Virginia. Until this project was undertaken, criminal decisions of the Supreme Court were frequently unobtainable by Commonwealth's Attorneys and judges until the publication of the Court's advance sheets many weeks after the decisions had been handed down. Now, these decisions are rushed to the printer the day they are announced and are mailed to you within 48 hours.

Incidentally, nothing pleased me more than to hear shortly after the TAU began sending out Supreme Court decisions that one of you had reinforced a case on the basis of one such decision which reached you in the mail the day the hearing was to be held.

A second project of the Technical Assistance Unit is to work closely with the committee which is preparing Virginia's first Commonwealth's Attorneys manual. This publication should be of significant assistance to all of you, whether you have been in office for a number of years or only for a short time. We hope that the manual, once published, will be continually updated.

Perhaps the TAU's most inwardly satisfying project to date has been in the field of publication. All of you have, by now, received the first two issues of the *Virginia Prosecutor*. Nothing like it has ever been attempted before, and we have the high hopes for its success. It provides the sort of steady continuity I referred to earlier—filling in the gaps between seminars like this one. The *Virginia Prosecutor* is aimed at keeping you posted.

As you have already observed, it brings you significant rulings of the Attorney General in criminal law. In the past, a Commonwealth's Attorney often knew only the Attorney General's rulings which he himself had requested. He had to wait until the Annual Report of the Attorney General was published each winter to learn what other rulings my office had made. Now, through the monthly newsletter, digests of all important opinions of the Attorney General pertaining to criminal matters will be in the hands of Commonwealth's Attorneys promptly.

You may also be aware that a second publication of the Technical Assistance Unit is now in its second edition. This is a monthly newsletter for law enforcement officers, called the *Virginia Peace Officer*. The *Peace Officer* is similar in format to the *Prosecutor*, but is designed expressly for law enforcement officers. This newsletter also contains synopses of rulings of my office that have to do directly with law enforcement. In addition, the *Virginia Peace Officer* will include brief articles on law enforcement techniques, equipment and facilities.

Both of these monthly newsletters provide something else that has been missing in the past, and which I consider absolutely necessary if we are all to work together toward the elimination of criminal activity in the various localities—communication. We all need to know what each other is doing. Seminars like this, and regular meetings of the Commonwealth's Attorneys Association or the Sheriff's Association, for example, enable us to exchange ideas and information. But they don't occur more than once a year. The newsletters published by the Technical Assistance Unit will provide continuity.

Incidentally, we are now sending complimentary copies of the *Virginia Prosecutor* to judges of courts of record. Many of them have expressed interest in the publication, and I am certain they will find it helpful.

Another function of the TAU which I should emphasize at this seminar is its constant monitoring of the work of the General Assembly. All of you are concerned with pending legislation which, in one form or another, will affect the operation of the office you hold. The TAU maintains a close watch on the progress of this kind of legislation. There are two objectives to be attained. First, the TAU will forward immediately to all Commonwealth's Attorneys de-

tails of any statute enacted at this session as emergency legislation having to do with criminal law. This will avoid weeks of delay in getting such vital information into the hands of you who need it most.

Then, at the conclusion of the 1972 session of the General Assembly, the Technical Assistance Unit will forward a digest of all legislation having to do with crime and enforcement of law. Thus, you will have an opportunity to have in file, months in advance of the effective date of these new acts, pertinent new statutes, and there will be ample time to study them and their application.

I have addressed myself on several previous occasions recently to legislation which has been proposed by the Virginia State Crime Commission to the current session of the General Assembly. Most of you are, I believe, familiar with the Commission's proposals, and I will not trespass on your time today with a detailed analysis of them. However, several of those proposals are of such impact that I think it would be well to remind you of them here.

It is likely that the proposed wiretap statute—which would be the Commonwealth's first venture with this crime fighting technique—could become our most telling weapon against organized crime. As proposed, the statute would include stringent safeguards to protect the privacy of individual citizens. A wiretap ordered by the court having jurisdiction could be used only in cases involving the drug traffic, gambling, extortion or bribery.

I consider its passage vital if we are to stop Organized Crime in its tracks in the Commonwealth.

The difficulty encountered in obtaining convictions, because of the reluctance of witnesses to testify, is dealt with in another bill proposed by the Virginia State Crime Commission. This measure would provide witnesses immunity from prosecution under specified circumstances only. The grant of immunity would not be automatic but require an affirmative act on the part of the Commonwealth's Attorney and the presiding judge. The bill would have general applicability and, if adopted, would involve the repeal of those existing immunity statutes relating to particular offenses.

I think, too, you will be interested in legislation I support for a study of Title 16.1 of the Code. This Title, which includes our Juvenile and Domestic Relations Court system as well as all other courts not of record, has not been revised in many years. It is likely that sweeping changes will be made in these courts as a result of recommendations of the Virginia Court System Study Commission. Doubtless the result will create conflicts within Title 16.1. It seems advisable, therefore, that the Virginia Code Commission undertake a study of this Title immediately leading toward recodification by the 1974 session of the General Assembly.

These and other proposals, including a bill to make permanent the Crime Commission, constitute an aggressive and forward-looking program to fight crime. I trust the legislature will not hesitate to act favorably on them.

Aside from legislative action itself, one of Virginia's most effective programs against crime in the last few years has been that directed by the Division of Justice and Crime Prevention. The Division, through its administration of federal money provided by the Law Enforcement Assistance Administration, has approved a wide variety of grant applications across the state. The benefits have affected virtually every area of the Commonwealth, and law enforcement has, as a direct result, shown marked improvement.

This seminar itself was made possible by an LEAA grant, supplemented by state funds granted to the Division of Justice and Crime Prevention by the General Assembly. The

newsletters I spoke of earlier could not have been produced without such a grant. Nor could the criminal decisions of the Supreme Court of Virginia be sped to you after each term of court without funding from this source.

Should the state not be able to produce sufficient matching funds in the future, many of these programs through which crime, its causes and effects, must be attacked could not proceed. Yet, today there is serious concern that this is exactly what may happen.

The budget proposed by Governor Holton to the General Assembly contains a serious cutback in funds proposed to be allocated to the Division of Justice and Crime Prevention to match available federal funds from LEAA. The Division's Director, Dick Harris, had originally asked for \$8.7 million, a sum sufficient to meet all need for matching funds at the state level for the next two years. It would also have permitted the Director to employ an additional 30 persons and relieve the workload on his presently overburdened staff.

That request was rejected. A second budget was submitted in the amount of \$4.7 million. It would have met the state matching requirements for local grants, but would have required state agencies out of their own budgets to put up \$150 in cash or in kind for each \$1,000 of a given project. And it reduced to 25 the number of new employees for the Division.

That second budget was also rejected by the Governor. So, a third budget was submitted by the Division of Justice and Crime Prevention—this time asking for only \$2.8 million. It met with the Governor's approval, but the result is to maintain the Division at the federal 1971 fiscal year level insofar as LEAA funds are concerned.

These critical budget cutbacks mean that the Commonwealth will be able to obtain only \$7.6 million in federal funds in FY 1973 and in FY 1974, thus losing \$14 million dollars in available monies from the Law Enforcement Assistance Administration. The effect upon vitally-needed programs to fight crime in Virginia will be clearly adverse. In the field of drug abuse alone—the Commonwealth's worst crime problem—we are in danger of being crippled just after we've learned to walk.

In a speech on the floor of the U.S. Senate this past Monday, Senator Spong decried the action taken in cutting the budget requests of the Division of Justice and Crime Prevention. The Senator said "short changing drug abuse programs is not an economy Virginia can afford." Senator Spong pointed out that the cutback comes at a time when the state's own Crime Commission has called drug abuse the most serious crime problem facing the state. And he urged Governor Holton and the General Assembly to provide the necessary funds to permit the implementation of these programs with LEAA support.

The Senator moved simultaneously on the legislative front by introducing a bill which would allow states to delay meeting the new matching fund requirements for a year. Senator Spong's legislation would free about a quarter of a million dollars in Virginia for matching purposes in the form of goods and services. But even this proposal, if enacted, would do little to repair the dent in the Division of Justice and Crime Prevention's budget for the next two years.

I think it is imperative that the General Assembly give earnest consideration to appropriating the \$1.9 million in funds cut from the second budget of Mr. Harris' Division. We cannot afford to withdraw from the front line positions we have gained in the fight against crime. We dare not risk losing momentum when every Virginia citizen demands that crime be halted. This is not the time for Virginia to say that it costs too much to make our streets safe. Short

changing law enforcement does not constitute fiscal responsibility in light of society's loss from criminal activity. Instead it represents partial disengagement when victory is not yet in sight. I, therefore, urge you to use your influence, combined with your knowledge of the seriousness of conditions with which you are faced, to persuade the General Assembly to restore these vitally needed funds.

In conclusion, I submit that today is a time of opportunity for all of you as Commonwealth Attorneys. Virginia and her citizens are looking to you for leadership in making law enforcement truly effective. You are in a position to reduce the incidence of crime in the Commonwealth, but it will take all your skills, all your cooperative efforts, and above all your dedication to the principle that ours is a society built on respect for law to do the job. Let me assure you that my office and my staff stand ready to be of assistance, whenever you feel we may be of service, in this the pursuit of our common goal.

FORMER SENATOR A. WILLIS ROBERTSON

Mr. McGEE. Mr. President, it was not so long ago that the halls and corridors of the Senate were graced by the happy presence of that distinguished public servant from Virginia, A. Willis Robertson, who, for two decades, ably represented the people of his State and the Nation in this body.

While those of us who served with Senator Robertson have special memories of his long and devoted service, as well as friendship, the measure of the man can also be judged by the thousands upon thousands of citizens whose daily lives brought them into contact with Senator Robertson. Almost invariably, I would say, they came away richer. Shortly after his death, I had occasion to discuss Senator Robertson with a member of the Capitol Police, whose memories were of a down-to-earth man who always had the time and the presence of mind to talk with and learn from the man on the door or the man on the street.

Willis Robertson's career was varied, but, for the most part, it was a public career. A lawyer and a veteran of service during World War I, he served in the Virginia State Senate when many of us in this body were children. Later, he served as the Commonwealth's Attorney and as chairman of the Virginia Game and Inland Fisheries Commission—an experience which brought valuable insight to the U.S. Senate in later years.

A. Willis Robertson was a wise legislator and a careful one. But, more, he was a solid man, a good friend, a person whose presence among us has made an impact. He is missed, Mr. President, but his example carries on.

THE GENOCIDE CONVENTION: TOOLS FOR IMPLEMENTATION

Mr. PROXMIER. Mr. President, critics of the Genocide Convention of 1948 have argued that U.S. ratification would require complicated legislation and American entanglements in international affairs. Further, they maintained that endorsement of the treaty would inevitably conflict with existing laws of the Nation.

However, during the past week a bill has been introduced in the Senate by the Senator from Pennsylvania (Mr. SCOTT) which provides the means for simple and proper implementation of the treaty's articles. Even a summary examination of this proposed legislation reveals that implementation is neither complicated nor in conflict with our present statutes. It conforms in every way with the safeguards of the Constitution, Bill of Rights, and past international agreements.

The Senate's long hesitation over ratification, ostensibly in anticipation of concrete legislation, can now be ended. Let us quickly endorse this legislation and ratify the Genocide Convention now.

WE MUST NOT FAIL OUR FIREFIGHTERS

Mr. MCINTYRE. Mr. President, I wish to commend the tireless efforts of one of America's most vital, yet often downgraded and least appreciated groups, the American fireman.

Over 200 firefighters lost their lives battling more than 2½ million blazes in this country last year.

Twelve thousand two hundred people died in these fires and over 3,000 of these victims were children.

But how much money is allocated to assist firemen in their struggle against the ravages of fire? The amount is shockingly small, and with our Nation's present concern with other critical problems, no funding has been given from the Department of Housing and Urban Development to firefighting units in several years.

There just is not enough money to go around, and firefighting groups cannot get the green light to fund necessary improvements.

That is why I have submitted an amendment to the housing bill now being deliberated in the Committee on Banking, Housing and Urban Affairs. The amendment would earmark funds for firefighting units throughout the country.

It would cover construction to expand present facilities and to build new ones. It would also authorize HUD to allocate funds for equipment where a need has been demonstrated.

Mr. President, I believe that the bill would aid not only the big city fire departments feeling the pinch of urban sprawl with their outdated facilities, it would also aid the smalltown department, particularly the volunteer department, that does not serve a single community but several small communities spread miles apart.

We need to tell firefighters across this Nation that we appreciate and applaud their countless acts of heroism. The best way to let them know we care is to give them the opportunity to improve their facilities, both physical plant and equipment.

After all, it is our property and our lives that are at stake.

Mr. President, I ask unanimous consent to have printed in the RECORD an editorial from the Washington Post of February 16, 1972. The editorial states the awful truth about fires and deserves the attention of the Members of the

Senate who are as much concerned as I am about this problem.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

**A LOOK AT WHAT KILLED 12,200 PEOPLE
LAST YEAR**

What with all the efforts to do something about "bettering our environment"—which is really a catchphrase for making our surroundings safer and healthier—there is a tendency to overlook one of the oldest people-killers known to man: fire. Somehow, maybe because it's too obvious to become a trendy environmental topic, public concern about fire safety has never amounted to much more than a set of seasonal campaigns that draw token civic support.

But last year, fire killed 12,200 people in the United States—and about one-fourth of these victims were children. The total also includes 210 firefighters. The property damage figures are shocking, too: an estimated \$2.845 billion caused by the more than 2½ million fires in 1971. Of this total, about \$2.3 billion represents damage to buildings and other contents; the rest is attributed to forest fires and damage to aircraft, ships and motor vehicles. The President's National Commission on Fire Prevention and Control, which compiled these statistics, says the principal causes of building damage were defective, misused and overloaded electrical wiring and equipment; defective or overheated heating and cooking equipment; and careless use of smoking materials.

Obviously, safety slogans haven't done the job, and new ways must be found to improve the nation's ability to prevent, detect and control fire. This is the challenge currently being undertaken by the presidential commission, which will begin a series of public hearings on the subject here this morning at the old Senate office building. The commission, which includes Cabinet members, engineers, insurance executives, experts in firefighting and four advisory members from Congress, is doing a two-year study of the nation's fire problems and will submit a report of its findings and recommendations in June, 1973.

While no simple solutions are likely to spring forth from the public hearings, this serious attempt to come up with some new thinking deserves public attention and support, as a significant—and extremely difficult—examination of an age-old environmental problem.

LITHUANIAN INDEPENDENCE DAY

Mr. TAFT. Mr. President, February is a month when Americans recognize two of our country's greatest leaders, George Washington and Abraham Lincoln. It is also a special month for those Americans of Lithuanian origin or descent.

February 12 marked the 721st anniversary of the formation of the Lithuanian state, when Mindaugas the Great unified all Lithuanian principalities into one kingdom in 1251. February 16 was the 54th anniversary of the establishment of the modern Republic of Lithuania in 1918.

As we pause in memory of those who helped to preserve the freedom of the United States, it is also appropriate for us to pay tribute to the Lithuanians throughout this country who keep alive the spirit of liberation. This day is touched with sadness only because the Baltic States are no longer free. For all Americans it should be a day of thanks for our freedom, inspired by the millions

of brave people currently living under Soviet rule.

We are fortunate to have the Lithuanian Americans, who understand the value of true democracy so well, living in the United States. I salute those who celebrate their brief rise to independence and hope that once again they may realize their goal of freedom.

Mr. President, I ask unanimous consent to have printed in the RECORD, copies of certain correspondence and other material, including House Concurrent Resolution 416 of the 89th Congress.

There being no objection, the items were ordered to be printed in the RECORD, as follows:

JANUARY 11, 1972.

Senator ROBERT TAFT, Jr.,
Senate Office Building,
Washington, D.C.

DEAR SENATOR TAFT: February 16, 1972 will mark the 56th anniversary of the Independence of Lithuania. Lithuania as you know has been occupied by the Soviets since World War 2. Would you help commemorate their brief independence by making appropriate remarks in the Senate on that date.

Thank you for helping to make the plight of Lithuania known to all.

Sincerely,

Mrs. DIANNE DRUMSTAS.

JANUARY 25, 1972.

Senator ROBERT TAFT, Jr.,
U.S. Senate,
Washington, D.C.

DEAR SENATOR: I would like to take this opportunity to remind you that the American Lithuanian Community throughout the United States will be celebrating the 54th anniversary of Lithuanian Independence on February 16.

We would appreciate your help by commemorating this day on the Senate floor.

Thank you.

Sincerely,

ALBERT OZALIS.

JANUARY 26, 1972.

Hon. ROBERT TAFT, Jr.,
U.S. Senate,
Senate Office Building,
Washington, D.C.

DEAR SENATOR TAFT, Jr.: The Lithuanian Americans will commemorate the 54th anniversary of Lithuanian Independence on February 16, 1972. I would appreciate your public and moral support on this occasion.

Sincerely yours,

Mrs. VAL STANAITIS.

January 29, 1972.

Senator ROBERT TAFT, Jr.,
Senate Office Building,
Washington, D.C.

DEAR SENATOR: On February 16, Lithuanian-Americans throughout this country will commemorate the 54th Anniversary of Lithuania's Independence even though for the past 31 years she has been under Russian oppression.

I would sincerely appreciate it if you would commemorate this occasion in the House and Senate.

Thank you in advance and wishing you continued political success.

Yours truly,

(Miss) LILLIAN M. SASNAUSKAS.

CHICAGO, ILL., January 27, 1972.

DEAR SENATOR TAFT: Although Lithuania is not a free nation, people of Lithuanian ancestry as well as many of their friends will commemorate the 54th anniversary of Lithuanian Independence on February 16, 1972.

I hope that you too will be able to give us your public moral support on this day.

Yours truly,

ALBERT L. ZAKARKA.

OAK LAWN, ILL., February 2, 1972.

Senator ROBERT TAFT, Jr.,
U.S. Senate,
Washington, D.C.

DEAR SENATOR: Won't you please join with those of us of Lithuanian ancestry living in a free America in our annual commemoration of Lithuanian Independence on February 16.

Your public support of this occasion would be deeply appreciated as it is always our hope freedom may once again come to Lithuania.

Sincerely,

Mrs. A. MOCKUS.

LITHUANIAN AMERICAN COUNCIL, INC.,

Chicago, Ill., February 4, 1972.

DEAR SENATOR: Freedom and independence is cherished throughout the world by all people. On February 16th, Lithuanians will commemorate the 54th anniversary of Lithuania's Declaration of Independence as a Republic, although her glorious past history dates back to the 12th century. The only country where they will be unable to commemorate this historical event will be in Lithuania itself because of the continuing subjugation and oppression by the Soviet Union.

Reliable sources confirm that the Lithuanian people continue to revere their national and cultural traditions and resist the Communist occupation.

The Secretary of State, William P. Rogers, stated on January 27, 1971: "The American people understand and sympathize with the desire of the Lithuanian people to be masters of their own destiny. The United States government, by its continued non-recognition of the forcible incorporation of Lithuania, affirms its support for Lithuania's right of self-determination."

The Honorable Charles H. Percy, Senator from Illinois, at the request of the Lithuanian American Council, will be sponsoring the commemoration of Lithuanian Independence Day in the Senate on Thursday, February 17, 1972. Senator Percy had first hand opportunity, during his visit to Lithuania, to recognize the desire of the Lithuanians to be independent and freed from Soviet enslavement.

The Lithuanian American Council will greatly appreciate your support of the official United States position of non-recognition of Soviet occupation of Lithuania. The extension of your remarks concerning Lithuania's illegal annexation and their inclusion in the Congressional Record is kindly requested.

May I also take the opportunity to ask you to remind President Nixon, on his forthcoming trips to Peking and Moscow, to seek freedom and self-determination for Lithuania and the other Baltic countries.

Please accept our gratitude for your efforts to propagate the cause of human freedom and independence for all people of the world, including those of Lithuania.

Respectfully yours,

KAZYS C. BOBELIS, M.D., President.

XENIA, OHIO, February 8, 1972.

Hon. ROBERT TAFT, Jr.,
Senate Office Building,
Washington, D.C.

MY DEAR SENATOR TAFT: Americans of Lithuanian origin or descent and their friends in our community and throughout the nation will commemorate two very important anniversaries this month (starting February 12): (1) They will observe the 721st anniversary of the formation of the

Lithuanian state when Mindaugas the Great unified all Lithuanian principalities into one kingdom in the year 1251; and (2) They will mark the 54th anniversary of the establishment of the Republic of Lithuania on February 16, 1918.

As a rule, the U. S. Congress marks these anniversaries each and every year. I most sincerely ask you to take part in the commemoration of Lithuanian Independence Day in the U. S. Senate. The U. S. Senate and the House has passed *H. Con. Res. 416*, 89th Congress, that calls for freedom for Lithuania, Estonia and Latvia. Won't you please urge the Administration by your kind remarks in the Senate to implement this very important legislation.

In America we have a tendency to take too much for granted—like our freedom. But many of our community's relatives are locked behind the iron curtain unable to have a free thought or even contact loved ones here in Dayton, much less ever dream of seeing them again. That is why we, who are most involved with the potential freedom of Lithuania, are asking you to help.

Please mail me a copy of the *Congressional Record* that will carry your remarks. "Ašiu Labai."

Very sincerely,

(Mrs.) KAREN C. BEDROWSKY.

LITHUANIAN AMERICAN COMMUNITY
OF THE UNITED STATES OF AMERICA, INC.

Delran, N.J., February 4, 1972.

HON. ROBERT TAFT, JR.
Senate Office Building,
Washington, D.C.

MY DEAR SENATOR: Americans of Lithuanian origin or descent and their friends in all parts of our great nation will commemorate two very important anniversaries this month (starting February 12th): (1) They will observe the 721st anniversary of the formation of the Lithuanian state when Mindaugas the Great unified all Lithuanian principalities into one kingdom in 1251; and (2) They will mark the 54th anniversary of the establishment of the modern Republic of Lithuania on February 16, 1918.

The United States Congress marks these anniversaries each and every year. We kindly ask you to take part in the commemoration of Lithuanian Independence Day in the United States Senate that will take place during the second part of February (starting February 14th).

Enclosed you will find a copy of an essay prepared by us which could be one of the sources for your remarks in the Senate. We are mailing you a copy of *H. Con. Res. 416* that was unanimously passed by the Senate and the House (89th Congress). This legislation calls for freedom for Lithuania and the other two Baltic states—Estonia and Latvia. Please insert this very important legislation in the *Congressional Record* for the information of all your colleagues in the U. S. Congress and all the readers of this publication. Please urge the Administration (in your remarks in the Senate) to implement the aforesaid legislation by bringing the Baltic States' question in the United Nations and demanding the Soviets to withdraw from Lithuania, Latvia and Estonia.

Needless to say, all Lithuanian-Americans and other freedom-loving constituents of your State will really appreciate your aid and assistance given by you to this crusade to free the Baltic States.

Thank you.

Sincerely,

V. P. VOLTERAS,
President,
National Executive Committee.

LITHUANIA'S SEVEN-CENTURY QUEST FOR
FREEDOM—THE LAND OF SIMAS KUDIRKA

"I have nothing to add to what I have already said, only one wish, more specifically,

a request to the supreme court and the government of the Soviet Union: I ask that you grant my homeland, Lithuania, independence."

—From appeal of Simas Kudirka during his trial.

The Kremlin is fond of saying that Russian imperialism died with the czar. But the fate of the Baltic nations—Lithuania, Latvia and Estonia—shows this to be a cruel fiction. The Communist regime did not come to power in the Baltic States by legal or democratic process. The Soviets invaded and occupied the Baltic States in June of 1940, and the Baltic peoples have been suffering in Russian-Communist slavery for more than 30 years.

700-YEAR-OLD STATE

The Lithuanians are proud people who have lived peacefully on the shores of the Baltic from time immemorial. For instance, this year marks the 721st anniversary of the formation of the Lithuanian state. Mindaugas the Great unified Lithuanian principalities into one kingdom in 1251.

The Baltic peoples have suffered for centuries from the "accident of geography." From the West they were invaded by the Teutonic Knights, from the East by the Russians. It took remarkable spiritual and ethnic strength to survive the pressures from both sides. The Lithuanians, Latvians and Estonians, it should be kept in mind, are ethnically related neither to the Germans nor the Russians.

After the Nazis and Soviets smashed Poland in September of 1939, the Kremlin moved troops into the Baltic republics and annexed them in June of 1940. In one of history's greatest frauds, "elections" were held under the Red army guns. The Kremlin then claimed that Lithuania, Latvia and Estonia voted for inclusion in the Soviet empire.

MOST BRUTAL OCCUPATION OF ALL TIME

Then began one of the most brutal occupations of all time. Hundreds of thousands of Balts were dragged off to trains and jammed into cars without food and water. Many died from suffocation. The pitiful survivors were dumped out in the Arctic or Siberia. The Baltic peoples have never experienced such an extermination and annihilation of their people in their long history through centuries as during the last three decades. Since June 15, 1940, these three nations have lost more than one-fourth of their entire population. The genocidal operations and practices being carried out by the Soviets continue with no end in sight.

Since the very beginning of Soviet Russian occupation, however, the Balts have waged an intensive fight for freedom. During the period between 1940 and 1952 alone, some 30,000 Lithuanian freedom fighters lost their lives in an organized resistance movement against the invaders. The cessation of armed guerrilla warfare in 1952 did not spell the end of the Baltic resistance against Soviet domination. On the contrary, resistance by passive means gained a new impetus.

SUCCESSFUL REVOLT AGAINST SOVIETS

The year of 1971 marked the 30th anniversary of Lithuania's successful revolt against the Soviet Union. During the second part of June of 1941 the people of Lithuania succeeded in getting rid of the Communist regime in the country: freedom and independence were restored and a free government was reestablished. This free, provisional government remained in existence for more than six weeks. At that time Lithuania was overrun by the Nazis who suppressed all the activities of this free government and the government itself.

The Government of the United States of America has refused to recognize the seizure and forced "incorporation" of Lithuania, Latvia and Estonia by the Communists into the Union of Soviet Socialist Republics. Our Government maintains diplomatic relations

with the former free Governments of the Baltic States. Since June of 1940, when the Soviet Union took over Lithuania, Latvia and Estonia, all the Presidents of the United States (Franklin D. Roosevelt, Harry S. Truman, Dwight D. Eisenhower, John F. Kennedy, Lyndon B. Johnson, and Richard M. Nixon) have stated, restated and confirmed our country's nonrecognition policy of the occupation of the Baltic States by the Kremlin dictators. However, our country has done very little, if anything, to help the suffering Baltic peoples to get rid of the Communist regimes in their countries.

RESTORATION OF INDEPENDENCE TO LITHUANIA

The case of the Baltic States is not a question about the rights of self-rule of Lithuania, Latvia and Estonia, since this is established beyond any reasonable doubt, but the question is how to stop the Soviet crime and restore freedom and independence to these countries. The Select Committee of the House of Representatives to investigate the Incorporation of the Baltic States into the U.S.S.R., created by the 83rd Congress, after having held 50 public hearings during which the testimony of 335 persons was taken, made a number of recommendations to our Government pertaining to the whole question of liberation of the Baltic States. According to the findings of this House committee, "no nation, including the Russian Federated Soviet Republic, has ever voluntarily adopted communism." All of them were enslaved by the use of infiltration, subversion, and force. The American foreign policy toward the Communist enslaved nations, the aforesaid House committee stated, must be guided by "the moral and political principles of the American Declaration of Independence." The present generation of Americans, this committee suggested, should recognize that the bonds which many Americans have with enslaved lands of their ancestry are a great asset to the struggle against communism and that, furthermore, the Communist danger should be abolished during the present generation. The only hope of avoiding a new world war, according to this committee, is a "bold, positive political offensive by the United States and the entire free world." The committee included a declaration of the U. S. Congress which states that the eventual liberation and self-determination of nations are "firm and unchanging parts of our policy."

RIGHT STEP IN THE RIGHT DIRECTION

The United States Congress has made a right step in the right direction by unanimously adopting *H. Con. Res. 416* (89th Congress) that calls for freedom for Lithuania, Latvia and Estonia. All freedom-loving Americans should urge the President of the United States to implement this very important legislation by bringing the issue of the liberation of the Baltic States in the United Nations and requesting the Soviets withdraw from Lithuania, Latvia and Estonia. The time has come for the whole world to demand that the principle of self-determination be respected and that the nations of Lithuania, Latvia and Estonia, too, shall be free from domination and be permitted to choose their own form of government. We should have a single standard for freedom. Its denial in the whole or in part, in any place in the world, including the Soviet Union, is surely intolerable.

H. CON. RES. 416

Whereas the subjection of peoples to alien subjugation, domination, and exploitation constitutes a denial of fundamental human rights, is contrary to the Charter of the United Nations, and is an impediment to the promotion of world peace and cooperation; and

Whereas all peoples have the right to self-determination; by virtue of that right they freely determine their political status and

freely pursue their economic, social, cultural, and religious development; and

Whereas the Baltic peoples of Estonia, Latvia, and Lithuania have been forcibly deprived of these rights by the Government of the Soviet Union; and

Whereas the Government of the Soviet Union, through a program of deportations and resettlement of peoples, continues in its effort to change the ethnic character of the populations of the Baltic States; and

Whereas it has been the firm and consistent policy of the Government of the United States to support the aspirations of Baltic peoples for self-determination and national independence; and

Whereas there exist many historical, cultural, and family ties between the peoples of the Baltic States and the American people: Be it

Resolved by the House of Representatives (the Senate concurring), That the House of Representatives of the United States urge the President of the United States—

(a) to direct the attention of world opinion at the United Nations and at other appropriate international forums and by such means as he deems appropriate, to the denial of the rights of self-determination for the peoples of Estonia, Latvia, and Lithuania, and

(b) to bring the force of world opinion to bear on behalf of the restoration of these rights to the Baltic peoples.

CHICAGO, ILL., February 10, 1972.

The Honorable ROBERT TAFT, Jr.,
House of Senate,
Washington, D.C.

DEAR SIR: It is with high esteem and profound gratitude that I am addressing these words to you and to the other friends of the enslaved Lithuanian nation on the occasion of the commemoration of the 54th anniversary of the proclamation of Lithuania's Independence.

Today, more than ever, all leaders, religious and those of Governments are talking of peace. Wars are the bane and the shame of mankind. Intelligent men of good will should resolve their problems according to right reason, not be force of arms. But the word "peace", without certain intrinsically inherent qualities, is a grotesque parody of peace and travesty of justice. Peace without God-given freedom and justice for all is a caricature. An excellent example of this kind of "peace" is provided by the USSR, particularly in its slave labor and concentration camps, filled mostly with people from enslaved nations. The content of this kind of "peace" is suffering, fear, loathing for the hatred of the slavemasters. This kind of peace is the hallmark of all tyrannies.

No true peace is possible among nations unless it be founded on justice and tend towards its perfection in love. Indeed, a peace founded on injustice can be worse than war. Millions of European Jews, Poles, Ukrainians, Balts and others died, not on battlefields, but were executed en masse in trenches they were forced to dig themselves or were done away with in concentration camps. If World War II had not destroyed the nazis, the number of Jews, Slavs, French and others that would have been killed by now according to the Nazi timetable would be several times greater than those of both sides actually killed on the battlefields. The Soviet Communists are effectuating a similar plan this very moment in the countries they have subjected. Such a plan would go into immediate effect wherever the communists extend their empire.

It is strange indeed, that those who are advocating immediate, complete, unconditional and unilateral capitulation in Indochina, deliberately close their eyes tightly to the planned genocide of enslaved nations in the Soviet Union, progressing according to a certain timetable. The captive nations are

being destroyed at a faster rate during the present Soviet "peace" than they would be in a war. If this Soviet "peace" policy continues much longer, some of the smaller nations may become totally extinct.

I am not an advocate of war. All I wish to point out is, that it would be an empty and meaningless, indeed a flagrantly hypocritical gesture for the free world to accept a peace without freedom and justice for all conquered nations. The immediate consequence to such a "peace" accepted by the free world would be distrust and unbelief in the most solemn proclamation of its leaders, and hatred of the oppressors. The oppressors are well aware of this hatred and employ against it terror and physical extermination of the people. It seems obvious that such a "peace" is worse than war, for in a war the oppressed would make very many efforts to overthrow the tyranny that enchains them. Only those nations are honestly seeking peace, for whom peace is founded on justice and freedom for all nations. Only such are the peace-loving nations envisioned in the Charter of the United Nations.

Please accept my sincere homage to a distinguished champion of justice and freedom for all peoples.

Respectfully yours,

VINCENT BRIZGYS,
Auxiliary Bishop.

ADMINISTRATION'S DOUBLE TALK ON "FULL EMPLOYMENT" GOAL

Mr. MOSS. Mr. President, having lost confidence in its ability to reduce the Nation's unemployment rate, administration policymakers have resorted to a subtle campaign aimed at confusing public understanding of the jobless figures themselves.

According to the most recent Department of Labor report, unemployment figures remain near 6 percent, where they have hovered for more than a year. At the same time, budget deficits for the current fiscal year are now expected to approach \$40 billion. Lacking any concrete program to deal with the economy's anemic condition, the White House has chosen to employ its imagination elsewhere—in a calculated effort to distort the public's ability to judge the economic record.

Listening to the Nixon administration spokesmen, the whole concept of "full employment" has become an "impossible dream." Structural changes in the country's labor markets have made a 4-percent jobless rate, the usual standard for "full employment," an unreasonable goal. To their estimation, a much higher figure, perhaps 5 or 5½ percent, should now be considered as an acceptable target for national policy.

The administration's election year tactics assume an extremely short public memory. When President Nixon took office in June of 1969, unemployment stood at 3.5 percent—a percentage of the labor far below what the administration now calls unreasonable. Having failed to provide adequately for a successful peacetime economic transition, the administration blames the high unemployment rate on vague "structural conditions."

When it suits their purposes, however, administration economists are not hesitant to cite the 4-percent figure as the true "full employment" standard. In the

President's annual budget message to Congress, for example, administration policymakers took a sharp aboutface. Four percent was held up as the genuinely acceptable guide to a "full employment" situation. Seeking to explain away the historically high Federal deficits of recent years, White House economists referred to the concept of a budget "balanced at full employment." The Government is really spending no more than it would be collecting if the economy were at 4 percent unemployment.

The administration now admits that it is spending about \$39 billion more than it collects in revenues. It argues, however, that the level of Federal expenditures should be geared to the amount it would collect were the economy at "full employment." To insure itself the greatest possible leeway, it cites 4 percent as the appropriate "full employment" figure, the very same standard it called unreasonable when discussing the subject of joblessness itself.

There is an obvious political reason for such double talk. When discussing Federal deficits, it is clearly in the President's interest to argue that 4 percent is a still acceptable guide to a full employment situation. With the current jobless rate stuck at 6 percent it also serves the administration's purposes to set a normal full employment figure substantially below the current rate. Thus, with current unemployment so far above the 4-percent full employment standard, almost any Federal deficits could be talked away.

This, then, is the explanation for the administration's managed effort to manipulate presentation of national employment statistics. In certain discussions it benefits the incumbents to intimate that the 4-percent full employment goal is no longer valid. On the other hand, when a large difference between current and full employment justifies their deficit overruns, administration policymakers do not hesitate to rely upon a standard which at other times they consider obsolete.

There is nothing illusory about the unemployment rate, however, to those Americans out looking for work, but unable to find it. To them the administration's public relation's effort is all too obvious.

Despite all the administration's shell-game tactics, the figures speak for themselves. Unemployment is at its highest annual rate—6 percent—in a decade. At the same time the Federal Government is running its greatest peacetime deficit—\$38.8 billion—in history. In perpetrating a campaign to disguise these facts, the administration does a disservice to the people it seeks to lead. Each percentage point of unemployment means that there are more than 800,000 workers looking for jobs, but cannot find them. To these Americans and their families, the Nixon administration's "double talk" is seen for what it is.

In the end it will be these people, the 100-percent unemployment unemployed, who will see through the smokescreen of statistical manipulation, regardless of how dense it becomes between now and November.

CONCLUSION OF MORNING
BUSINESS

The PRESIDING OFFICER. All time for morning business has expired. Morning business is closed.

EQUAL EMPLOYMENT OPPORTUNITIES
ENFORCEMENT ACT OF 1971

The PRESIDING OFFICER. Under the previous order, the Chair now lays before the Senate the unfinished business, which will be stated.

The assistant legislative clerk read as follows:

A bill (S. 2515) to further promote equal employment opportunities for American workers.

The Senate proceeded to consider the bill.

The PRESIDING OFFICER. The pending question is on the adoption of the amendment of the Senator from North Carolina (Mr. ERVIN).

Mr. ERVIN. We are ready to vote, Mr. President.

Mr. WILLIAMS. Mr. President, the amendment proposed by the Senator from Alabama broadens the present exemption found in title VII and retained in the committee bill, for a religious corporation, association, educational institution or society with respect to employment of individuals of a particular religion to perform work connected with the religious activities of such institution.

This amendment would have the effect of exempting these institutions from the operation of title VII insofar as religion is concerned whether or not their activities are religious or secular.

I do not believe that the religious integrity of these institutions would be compromised by providing equal job opportunities for employees in positions unrelated to the religious activities of such institutions.

Mr. President, this is the second attempt to provide such an exemption. Several weeks ago, an amendment was offered that would provide a complete exemption from title VII to employees of educational and religious institutions. That amendment, No. 815 was soundly defeated on a vote of 55 to 25 on February 1.

Now, we are faced with another such amendment. Admittedly, it is a much narrower exemption that is offered since it only applies to religion. Nonetheless, I believe it should not be adopted.

Many of these religious corporations and associations often provide purely secular services to the general public without regard to religious affiliation, and most of the many thousands of persons employed by these institutions perform totally secular functions. In this regard, employees in these "religious" institutions perform jobs that are identical to jobs in comparable secular institutions. It is appropriate, therefore, that these persons employed by religious corporations and associations should be given the same equal employment opportunities as those persons employed in comparable positions by secular employers.

I would like to revisit some of these considerations as I did when the previous amendment was offered.

For example, religious organizations in this country own and operate a substantial number of hospitals open to the public. These hospitals employ a broad range of persons to staff them. Without expounding on all of the job classifications at a hospital, I will just note that the categories of employment range from nurses and hospital administrator to dietitians and housekeeping personnel. There is no justification, in my judgment, for such hospitals to be permitted to discriminate against such personnel on any grounds. Further, in my judgment, it might be very well unconstitutional for Congress to permit such discrimination. I recognize that the first amendment protects the free exercise of religion. However, the major purpose of hospitals and other service agencies is to provide public service. In providing this service they should not be allowed to become instruments of invidious and unreasonable discrimination in employment.

I would note for the record again that a similar issue was resolved by the administration under the Occupational Safety and Health Act passed by this Congress in 1970, which provided no exemptions for employers in defining the term "employer engaged in the business affecting commerce," for purposes of that act.

The Department of Labor faced the question of coverage of churches as employers. As a matter of enforcement policy, the performance of, or participation in, religious services—as distinguished from secular or proprietary activities whether for charitable or religion-related purposes—is regarded as not constituting employment under the act. I believe that interpretation is fully consistent with the statutory exemption in title VII of these institutions insofar as religious activities are concerned. Some of the Labor Department's examples would be useful comparisons. Coverage of religious organizations would include a private hospital owned or operated by a religious organization; a private school or orphanage owned or operated by a religious organization; commercial establishments or religious organizations engaged in producing or selling products such as alcoholic beverages, bakery goods, religious goods, and so forth; and administrative, executive, and other office personnel employed by religious organizations.

Some examples of noncoverage in the case of religious organizations would be: Clergymen while performing or participating in religious services; and other participants in religious services; namely, choir masters, organists, other musicians, choir members, ushers, and the like.

I reiterate my judgment expressed during the debate on the last such amendment. Of all the institutions in this country that should be setting the example of equal employment opportunity, of equal opportunity for that matter in all aspects of life, it is America's religious institutions. I am confident that the houses of God in this country do not shirk that responsibility nor should we. I, therefore, urge that the amendment be rejected.

The PRESIDING OFFICER. The question is on agreeing to the amendment

of the Senator from North Carolina (putting the question).

The amendment was agreed to.

Mr. ALLEN. Mr. President, I move to reconsider the vote by which the amendment was agreed to.

Mr. ERVIN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. WILLIAMS. Personally, I strongly oppose this amendment. I recognize, however, that 2 years ago, when this body faced the identical issue on October 1, 1970, it agreed to the amendment of the Senator from North Carolina by a rollcall vote of 43 to 28. I believe that a majority of the Senate would be as clear today in its agreement with the Senator from North Carolina and therefore I did not insist on a rollcall vote.

The PRESIDING OFFICER. The bill is open to further amendment.

Mr. WILLIAMS. Mr. President, I call up amendments numbered 896, 897, 899, 900, 901, and 902, and ask that they be considered en bloc.

The PRESIDING OFFICER. Without objection, the amendments will be considered en bloc.

The amendments will be stated.

The assistant legislative clerk proceeded to read the amendments.

Mr. WILLIAMS. Mr. President, I ask unanimous consent that further reading of the amendments be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered; and, without objection, the amendments will be printed in the Record.

The amendments are as follows:

AMENDMENT No. 896

On page 58, line 4, after "Senate" insert the following: "for a term of five years".

On page 58, line 9, strike out the word "members" and insert in lieu thereof the word "member".

AMENDMENT No. 897

On page 50, before line 20, insert the following:

SEC. 4A. The fifth sentence of section 706 (f) (1) of the Civil Rights Act of 1964, as amended by the previous section, is amended to read as follows: "Upon timely application, the court may, in its discretion, permit the General Counsel, or the Attorney General in a case involving a government, government agency, or political subdivision, to intervene in such civil action if he certifies that the case is of general public importance."

AMENDMENT No. 899

On page 60, line 9, beginning with the word "powers" strike out through the word "the" on line 12.

AMENDMENT No. 900

On page 59, in the matter to be inserted after line 22, strike out in lines 22 and 23 on page 3 of amendment numbered 797 the following: "the issuance of complaints, the prosecution of such complaints before the Commission," and insert in lieu thereof the following: "the filing of complaints".

On page 59, in the matter to be inserted after line 22, strike out beginning after the period on line 7 through the period on line 14 on page 4 of amendment numbered 797.

AMENDMENT No. 901

On page 56, beginning with line 15, strike out through the period in line 19.

AMENDMENT No. 902

On page 52, line 1, beginning with the comma, strike out through the word "thereof" on line 3.

Mr. WILLIAMS. Mr. President, the first amendment, No. 896, is a technical amendment to correct a typographical error in the redrafting of section 705 concerning the number of commissioners to make clear that their term of office is 5 years. The second sentence of the amendment corrects a typographical error.

No. 897 amendment to the court enforcement provision is intended to allow the general counsel to intervene in private actions not involving governments, governmental agencies or political subdivisions and to make clear that it is the Attorney General who will intervene in cases involving governments, governmental agencies, and political subdivisions brought by private individuals. The present language of the Dominick substitute only authorizes the Attorney General to intervene in private actions. The amendment is to clear up an inconsistency whereby the general counsel of the Commission may bring a civil action for the Commission, but might not be able to protect the Commission's interest in a case where private litigant is involved.

No. 899 is a technical amendment redefining the Commission's operational authority to eliminate references to the cease-and-desist powers.

No. 900 is a technical and conforming amendment to the provision of S. 2515 that created a general counsel. It makes clear the general counsel authority is to handle the filing of complaints under the now adopted court enforcement procedures rather than the issuance and prosecution of complaints before the Commission under cease and desist.

The amendment also strikes the provision prohibiting the Commission employees engaged in prosecutorial functions from participating in other decisional functions at the Commission since there is no administrative hearing process any longer, as a result of the amendment.

Amendment No. 901 is a technical amendment concerning the investigatory powers of the Commission which eliminates a sentence relating to the use of the subpoena powers in relation to cease and desist, which again has been stricken.

Amendment No. 902 is a technical amendment, eliminating the reference in the pattern and practice transfer to cease and desist procedures to make clear that the Commission's handling of pattern and practice cases is to be through the Federal district courts.

The PRESIDING OFFICER (Mr. Moss). The question is on agreeing en bloc to the amendments numbered 896, 897, 899, 900, 901, and 902.

The amendments were agreed to en bloc.

The PRESIDING OFFICER. The bill is open to further amendment.

Mr. WILLIAMS. Mr. President, I have nine other technical amendments which have not been printed. I have reviewed them with the Senator from North Caro-

lina and believe that, as they are of a technical nature only, they will be accepted.

I send the amendments to the desk and ask unanimous consent that they not be read but printed in the RECORD, and I will explain each one at this time.

The PRESIDING OFFICER. Is there objection to consideration of the perfecting amendments en bloc and to suspend the reading of the amendments? The Chair hears none, and it is so ordered; and without objection, the amendments will be printed in the RECORD.

The text of the amendments is as follows:

On page 33, in the matter to be inserted by an amendment after line 13, strike out the word "religions" and insert in lieu thereof the word "religion".

On page 33, in the matter to be inserted by an amendment after line 13, strike out the word "in" and insert in lieu thereof the word "to".

On page 38, in the matter to be inserted by amendment numbered 884, insert on page 2, line 7, after the period the following: "The person or persons aggrieved shall have the right to intervene in a civil action brought by the General Counsel or the Attorney General in a case involving a government, governmental agency, or political subdivision."

On page 38, in the matter to be inserted by amendment numbered 884, insert on page 2, line 13, after the words "Attorney General" the following: "has not filed a civil action".

On page 38, in the matter to be inserted by amendment numbered 884, on page 3, line 11, strike out "subsection (c)" and insert in lieu thereof "subsections (c) or (d)".

On page 38, in the matter to be inserted by amendment numbered 884, insert on page 5, line 6, after the word "Commission" the following: "or the Attorney General in a case involving a government, governmental agency, or political subdivision."

On page 38, in the matter to be inserted by amendment numbered 884, on page 5, line 20, strike out the word "plaintiff" and insert in lieu thereof the words "aggrieved person".

On page 38, in the matter to be inserted by amendment numbered 884, insert on page 5, after line 11, the following:

"(6) The provisions of section 706 (f) through (k), as applicable, shall govern civil action brought hereunder."

On page 55, line 12, strike out the word "or" and insert in lieu thereof the word "as".

On page 50, line 25, strike out "1971" and insert in lieu thereof "1972".

On page 51, line 20, strike out "1971" and insert in lieu thereof "1972".

On page 59, line 6, strike out "1971" and insert in lieu thereof "1972".

The PRESIDING OFFICER. The Senator from New Jersey (Mr. WILLIAMS) may propound the perfecting amendments at this time.

Mr. WILLIAMS. Mr. President, the first amendment that I offer makes two typographical corrections in the amendment that was adopted on religious belief. The first correction makes the word "religion" singular instead of plural. The second change is a grammatical change relating to hardship of religious practice to the conduct "of" the employer's business rather than "in" the conduct of the employer's business.

Mr. ERVIN. Mr. President, I would like to ask the Senator from New Jersey if that affects the amendment which was adopted in any respect—

Mr. WILLIAMS. No. This does not deal

with the amendment offered by the Senator from North Carolina. This deals with the amendment offered by the Senator from West Virginia, not the Senator's amendment.

The PRESIDING OFFICER. Does the Senator from New Jersey wish these amendments to be considered en bloc or separately?

Mr. WILLIAMS. I ask unanimous consent that they be considered en bloc, Mr. President.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. WILLIAMS. The second amendment replaces language that was in the original bill making it clear that the right of an aggrieved party to intervene in a civil suit brought by general counsel or Attorney General in cases involving a governmental agency or political subdivision. It is likely that such individual would have the right of intervention under Federal rules in civil procedures which this amendment is designed to make clear.

Mr. GRIFFIN. If the Senator from New Jersey will yield for a question, are these several amendments also cleared with the ranking Members on this side; is that correct?

Mr. WILLIAMS. Yes.

Mr. GRIFFIN. I thank the Senator.

Mr. WILLIAMS. They were all cleared with the Senators from New York and Colorado.

Mr. President, the third amendment is intended to make clear the provision under which a private action may have been filed in a case involving a governmental agency and political subdivision. Private action can be filed if the Attorney General has not filed a civil action within the requisite period of time. The words "has not filed a civil action" were left out of the amendment on court enforcement.

The fourth amendment is intended to correct a typographical error which allowed for the deferral under State and local proceedings under 706(c). It should have read 706 (c) or (d), since there are two deferral procedures.

The fifth amendment is intended to make clear that preliminary injunctions involving a governmental agency or political subdivision are to be sought by the Attorney General.

The sixth amendment is intended to conform to language in the bill relating to an "aggrieved person" rather than the term "plaintiff," since civil actions would be in the name of the commission or the United States.

The seventh amendment is in the nature of a technical amendment, to make clear the provisions under which civil actions are to be brought.

The eighth amendment is intended to correct a grammatical error in the redesignation of several subsections. This amendment, which is No. 898, is a technical amendment, intended to reflect the fact that the bill would be passed in 1972 rather than in 1971, as it is in the bill as introduced.

That concludes this group of technical amendments.

The PRESIDING OFFICER (Mr.

Moss). The nine technical amendments of the Senator from New Jersey have been explained and the motion to consider them en bloc having been granted, the question is on agreeing to the amendments en bloc.

The amendments were agreed to en bloc.

The PRESIDING OFFICER. The bill is open to further amendment.

Mr. ALLEN. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. WILLIAMS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. SAXBE). Without objection, it is so ordered.

QUORUM CALL

Mr. WILLIAMS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. ALLEN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

EQUAL EMPLOYMENT OPPORTUNITIES ENFORCEMENT ACT OF 1971

The Senate continued with the consideration of the bill (S. 2515) a bill to further promote equal employment opportunities for American workers.

Mr. ALLEN. Mr. President, on behalf of myself and the distinguished Senator from North Carolina (Mr. ERVIN) I call up an amendment which is at the desk and ask that it be stated.

The PRESIDING OFFICER. The amendment will be read.

The assistant legislative clerk read as follows:

On page 50, between lines 19 and 20, to insert the following at the end of section 4 with a proper subsection designation:

As used in this act, the term "charge" shall mean an accusation of discrimination supported by oath or affirmation."

Mr. ALLEN. Mr. President, by way of explanation of the clerk's difficulty in reading the amendment, it was drafted by the hand of the distinguished Senator from North Carolina (Mr. ERVIN) who—

Mr. ERVIN. If the Senator will pardon me, if he tested me solely on my capacity to write rather than to read, I could not pass a literacy test.

Mr. ALLEN. Fortunately, or unfortunately, as the case may be, there is no literacy test any more, so that the distinguished Senator would have no difficulty getting by any examination if he should appear before a board of registrars. [Laughter.]

Mr. President, the purpose of this amendment is to require that charges of discrimination filed with the Commission shall be under oath or affirmation. For

some reason unexplained, but apparently not intentional, the amendment as drafted and the committee substitute as reported, leave off the requirement that a charge be under oath.

The present law and the committee report containing a copy of the present law, at page 55, section 706(a) points out:

Whenever it is charged in writing under oath by a person claiming to be aggrieved—

So all this amendment would do would be to go back to the present law and make no change in the requirement, meaning charges are to be filed and made under oath in writing.

I am advised that the sponsors of the bill have no objection to the amendment. I trust that they will so state.

Mr. WILLIAMS. Mr. President, I gather that one copy has been taken from the Chamber. Does the Senator have another copy of the amendment?

Mr. ALLEN. No, sir. The amendment adds a new section at the end of section 4, and it is between lines 19 and 20 on page 50 of the bill. It merely states that the word "charge" as used in the act shall be a charge supported by oath or affirmation.

Mr. WILLIAMS. I wonder if the Senator would refer to the bill at page 34, and whether this would not be the place to make the bill conform to present law.

Mr. ALLEN. The only reason we did not put it there would have been because four or five subsections start off with reference to a charge, and it would have been necessary to amend the bill at about four or five places, whereas if we add one coverall, blanket statement it would cover the matter without trying to amend it as four or five different points, and possibly not covering every one.

Mr. WILLIAMS. The present law makes the requirement in one place, and it is in section 706.

Mr. ALLEN. Yes.

Mr. WILLIAMS. "Whenever it is charged in writing under oath." I do not know why it was taken out of the bill, but I would think that would be the place to put it back.

Mr. ALLEN. As I stated, if it were put back, it would also have to be put back on page 35, subsection (c), where it refers to the case of a charge; it would also have to be put on page 36, subsection (d), where it refers to the case of a charge; it would also have to be put on page 37, subsection (e), where it refers to the case of a charge.

Mr. WILLIAMS. If the Senator will yield further, if it could be done in one place, it probably would be best to do it in section 706(b) where the requirement would be put at the very beginning: "Charges shall be in writing under oath or affirmation." That would be on line 21, page 34, of the bill before the Senate.

Mr. ALLEN. Apparently the oath or affirmation requirement was left out of the bill.

Mr. WILLIAMS. Yes.

Mr. ALLEN. Would the Senator then, interpose no objection if we withdrew the amendment, put in a quorum call,

and then put in an amendment that is applicable to this line?

Mr. WILLIAMS. I wonder if the Senator could do that without the benefit of a quorum call, while we further discuss the bill. The reason for the omission in the bill of the requirement that the charges be filed in writing under oath is not clear to me. I do not know why it was done.

Mr. ALLEN. Very well. We will put in such an amendment.

Mr. WILLIAMS. The Senator has accommodated this provision to those who, for one reason or another do not resist taking an oath, and suggests putting it "in writing under oath or affirmation."

Mr. ALLEN. That is the way we have worded it.

Mr. WILLIAMS. Certainly, in the liberal spirit of today—

Mr. ERVIN. Mr. President, if the Senator will yield, I would suggest to the distinguished Senator from Alabama that he modify his amendment so as to read, on page 34, line 21, insert the following between the word "writing" and the word "and": "under oath or affirmation."

Mr. ALLEN. Very well.

Mr. President, I offer a modification of my amendment in the manner suggested by the distinguished Senator from North Carolina.

The amendment, as modified was, on page 34, line 21, after the word "writing," insert "under oath or affirmation."

The PRESIDING OFFICER. The amendment is so modified.

The question is on agreeing to the amendment.

Mr. ALLOTT. Mr. President, it just occurs to me at this time that this might be an appropriate time to see that the name of the Senator from Colorado, as well as other Senators who are present, appears in the RECORD. As I gaze upon this very tightly packed Senate today, I am astounded at the great number who are here.

I think this is a very meritorious amendment. I think we are very much indebted to the distinguished Senator from Alabama for offering the amendment, even though I cannot read the handwriting of the man who originated the amendment. For that reason I shall support the amendment wholeheartedly. It is very nice to be present here and participate in the debate on a day like this.

Mr. ALLEN. I thank the distinguished Senator from Colorado. I feel certain that, having taken a stand on this amendment and throwing his support behind it, the amendment will be unanimously adopted by the packed membership of the Senate present at this time. [Laughter.]

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment was agreed to.

Mr. MANSFIELD. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The second assistant legislative clerk proceeded to call the roll.

Mr. JAVITS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WILLIAMS. Mr. President, will the Senator yield?

Mr. JAVITS. I yield.

Mr. WILLIAMS. Mr. President, one of the amendments that was offered and considered en bloc, for technical reasons, should be rescinded, because the language in the master copy does not conform to the language as offered. I ask unanimous consent that the action of the Senate in adopting the first of the unprinted amendments be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JAVITS. Mr. President, what is the pending business?

The PRESIDING OFFICER. The pending business is S. 2515.

Mr. JAVITS. Mr. President, for the Senator from New Jersey (Mr. WILLIAMS) and myself, I send two amendments to the desk and ask for their immediate consideration.

The PRESIDING OFFICER. The amendments will be stated.

The assistant legislative clerk read as follows:

On page 34, line 1, strike out "(e)" and insert in lieu thereof "(g)".

On page 34, line 3, strike out "(e)" and insert in lieu thereof "(g)".

Mr. JAVITS. Mr. President, I ask unanimous consent that the amendments be considered en bloc.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. JAVITS. These are technical amendments, simply renumbering and relettering certain sections to conform with the present status of the bill.

The PRESIDING OFFICER. The question is on agreeing to the amendments, en bloc.

The amendments were agreed to.

Mr. JAVITS. Again for Senator WILLIAMS and myself, I send another amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

On page 66, line 15, beginning with the word "not" strike out through the word "Act" in line 17 and insert in lieu thereof the following: "be applicable with respect to charges pending with the Commission on the date of enactment of this Act and all charges filed thereafter".

Mr. JAVITS. Mr. President, this amendment would make whatever we do enact into law applicable to pending cases. The Department of Justice has requested it in a letter to the minority leader; that is my reason for offering it.

Mr. ERVIN. Mr. President, will the Senator yield?

Mr. JAVITS. I yield.

Mr. ERVIN. Did I understand the Senator from New York to say that this amendment merely provides that charges existing at the time the bill is passed shall remain in existence, and that the bill as amended shall be considered a part of the Civil Rights Act of 1964?

Mr. JAVITS. That is right.

Mr. ERVIN. In other words, it is just to keep pending charges alive, and make them subject to the amendment to the original act?

Mr. JAVITS. To this particular act, whatever it is, at the time it becomes law.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from New York.

The amendment was agreed to.

AMENDMENT NO. 848

Mr. JAVITS. Mr. President, I call up amendment No. 848.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk read as follows:

At the end of the bill add the following new section:

Sec. 14. The Chairman of the United States Civil Service Commission, or his delegate, shall be a member of the Equal Employment Opportunity Coordinating Council established by section 715 of the Civil Rights Act of 1964, as amended by this Act.

Mr. JAVITS. Mr. President, the purpose of this amendment is to make the Chairman of the U.S. Civil Service Commission a member of the Equal Employment Opportunity Coordinating Council, the idea being that, as we are introducing the Civil Service Commission into this legislation, the highest official of that Commission ought to be a member of the Coordinating Council which is established under this bill.

The PRESIDING OFFICER. The question is on agreeing to the amendment (No. 848) of the Senator from New York.

The amendment was agreed to.

AMENDMENT NO. 909

Mr. JAVITS. Mr. President, I submit an amendment to the desk for printing, and wish to serve notice as to what it is.

It is an amendment upon which I have yet to consult finally with the Senator from Colorado (Mr. DOMINICK); but in view of the fact that we will be tolling amendments, as it were, as of tomorrow, I would have it printed and give notice.

This amendment developed from debate, which I think Senators who are present will recall, on the Dominick amendment, in the presentation of the Senator from Kentucky (Mr. COOPER), who voted with Mr. DOMINICK.

Senator COOPER pointed out that the courts could refer cases, in order to expedite them, to a special master or referee. That, of course, is entirely possible under the Rules of Civil Procedure, and Senator DOMINICK and I discussed the idea of asking the courts to do that. Of course, we cannot compel them to do it, but we can ask the courts to do it, after the case has been pending for a given period of time.

Senator DOMINICK and I have agreed on a provision to go into the bill in principle, but we have not yet agreed on a number of days. We have discussed varying numbers of days from 60 to 150. I have chosen 120 days as being 4 months and somewhat analogous to the other provisions of the bill, which provide various periods of time.

So, Mr. President, I send to the desk for printing, so that it may be at the desk and qualified, an amendment which would provide that if the judge designated pursuant to subsection (f) of this

section, that is, in the assignment of a case of this kind for trial, does not assign the case for trial within 120 days after issue has been joined—that is, after giving the time for pleadings, which probably normally would take another 60 or 90 days, giving us, normally, the 6-month period which this act generally contemplates—the judge shall appoint a social master in accordance with the rules of civil procedure.

I would call the amendment up at this time except that I have not consulted with Senator DOMINICK.

The PRESIDING OFFICER. The amendment will be received and printed and will lie on the table.

Mr. ERVIN. I wish to ask a question about the jurisdiction of the amendment. As I understand the Dominick amendment, it puts the jurisdiction in the Federal district courts, or in certain cases in the circuit courts of appeals. Certainly with respect to cases in the Federal district courts, there is plenty of authority under existing law for the judge to appoint a special master if he sees fit to do so.

Mr. JAVITS. Exactly.

Mr. ERVIN. Would this amendment seek to make that mandatory?

Mr. JAVITS. I do not think we can mandate a court to do that. I did use the word "shall," but as a lawyer, I believe with such a provision in the law it would give a lawyer for either side the opportunity to apply to the court for such procedure in order to expedite the case. That is my thought in proposing it.

Mr. ERVIN. I wanted to tell the Senator from New York that I propose to offer an amendment which is now at the desk to provide for the trial of issues of fact arising in these cases by a jury. I guess we can battle out the two amendments. I do not know what the law of the Federal court is—I am not enough of an expert to say what it is—as to whether, if you have a right of jury trial, the court can preclude that right of a jury trial by appointing a special master.

Mr. JAVITS. I would doubt it. I would think the two amendments would be inconsistent, so if they were both the law, it would pose a very neat legal problem. I hope they will not both be the law.

Mr. ERVIN. I hope the Senator from New York joins the Senator from North Carolina in his deep veneration for the right to a trial by jury, which our citizens have enjoyed throughout the history of this Nation.

Mr. JAVITS. Of course, the Senator from North Carolina, who is as good a lawyer as I am, knows that the overwhelming majority of cases in equity are tried without a jury; so I am not too inhibited by the fact that the Senator would seek to provide for a jury trial. However, that is the Senator's right, as it is my right to seek some way of expediting this court procedure, which is what this amendment proposes.

Mr. ERVIN. I would just like to express the hope that the Senator from New York and those who have sought to provide for jurisdiction in the Federal courts will accept the wise course of action followed by the State of North Carolina, which gives the right of trial by jury in respect to all issues of fact, re-

gardless of whether they arise in legal or equitable proceedings.

Mr. JAVITS. I thank my colleague for the information he has conveyed to the Senate. As I said before, I shall not call up the amendment at this time, but simply ask that it be printed.

Mr. President, if there is no other business, I suggest the absence of a quorum.

Mr. ERVIN. Mr. President, I should like to call up an amendment, if the Senator will withhold that.

Mr. JAVITS. We have another amendment. We are discussing whether to bring it up. Will the Senator give me a minute on that?

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. JAVITS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 850

Mr. JAVITS. Mr. President, on behalf of the Senator from New Jersey and myself, I send to the desk amendment No. 850.

The PRESIDING OFFICER. The amendment will be stated.

The assistant legislative clerk proceeded to read the amendment.

Mr. JAVITS. Mr. President, I ask unanimous consent that further reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered; and, without objection, the amendment will be printed in the RECORD.

The amendment is as follows:

On page 66, between lines 13 and 14, insert the following new section:

"Sec. 13. Section 5108(c) of title 5, United States Code, is amended by—

"(1) striking out the word 'and' at the end of paragraph (9);

"(2) striking out the period at the end of paragraph (10) and inserting in lieu thereof a semicolon and the word 'and'; and

"(3) by adding immediately after paragraph (10) the last time it appears therein the following new paragraph:

"(11) the Chairman of the Equal Employment Opportunity Commission, subject to the standards and procedures prescribed by this chapter, may place an additional ten positions in the Equal Employment Opportunity Commission in GS-16, GS-17, and GS-18 for the purposes of carrying out title VII of the Civil Rights Act of 1964."

On page 66, line 14, strike out "Sec. 13" and insert in lieu thereof "Sec. 14".

Mr. JAVITS. Mr. President, this amendment proposes to establish 10 supergrade jobs in the Equal Employment Opportunity Commission to deal with the added responsibilities which are vested in the Commission. I shall not call it up today or deal with it today, if that is agreeable to the manager of the bill, but it can be the pending amendment overnight. I will lay before the Senate that amendment for consideration. I will not press it today.

Mr. MOSS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. MOSS. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. MOSS. Mr. President, I ask unanimous consent that if cloture should be invoked on S. 2515 tomorrow, it be in order to call up any amendment now at the desk to S. 2515, regardless of the pagination and section references, as now printed, so long as no changes in substantive matter are made, but that it would be in order to eliminate parts of amendments that would no longer be applicable because of changes in the bill; and that it be in order to correct the references to pages and sections on these amendments when called up so as to apply properly to S. 2515 as now amended.

This, of course, would have no effect on whether or not the amendments are germane as required by the rule.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. STEVENSON. Mr. President, S. 2515, the Equal Employment Opportunities Enforcement Act, is designed to give the Equal Employment Opportunities Commission the authority it needs to deal responsibly and effectively with job discrimination. In some quarters, however, S. 2515 is characterized strictly as a measure to combat job discrimination based on race or color. The legislative battle to enact S. 2515 is thereby cast as another chapter in the continuing racial saga which, for our purposes, began at least as early as the Constitutional Convention.

There is no question that S. 2515 is a civil rights bill in the best and truest sense of the term. Discrimination in employment because of race or color continues in this country, and the EEOC must be given new and more meaningful powers to help end this seemingly never-ending problem. But S. 2515 is something more.

There is, for example, job discrimination based on an employee's nationality, and on religion or religious practices. In regard to this latter problem, the Senate early in the debate on this bill considered and adopted an amendment proposed by the distinguished senior Senator from West Virginia, Mr. RANDOLPH, which sought to define more clearly and thereby prohibit more directly such discrimination based on religious practice. During that consideration Senator RANDOLPH documented the employment problems which affect those who seek to observe the Sabbath on a day other than Sunday, such as Seventh-Day Baptists, Seventh-day Adventists, and Orthodox and Conservative Jews.

There is yet another major area which the bill treats—the grave problem of discrimination in employment against women.

To many citizens of both sexes efforts to combat sex discrimination may seem novel. But even the sketchiest perusal

of American history discloses that the legislative aspect of this movement, the search for women's equal rights, is at least a century old. That was about the time that the roots which later became the full-fledged suffragette movement—culminating in the 19th amendment—began to grow. The equal rights amendment, which the Senate shall consider again in the near future and which I support, and which is a main legislative theme of all present-day women's groups, was first introduced in 1923 and has been introduced in every Congress since. And even at the late date of 1964 the women's rights movement as it has come to be known today was not prominent. But in 1964 Congress first enacted VII of the Civil Rights Act, and one of the broad mandates given to the newly established Equal Employment Opportunities Commission was to end discrimination in employment based on sex.

Sex discrimination, especially in employment, is not new. But it is widespread and persistent.

There are some 30 million women employed in the United States, about 38 percent of the total work force. And the number of working women has increased rapidly in the last 25 years—between 1947 and 1968 alone the number of women in the labor force increased by 75 percent. The comparable figure for men was only 16 percent. But despite this comparatively large increase in the number of women in the work force, women continue to be relegated to the lower-paying positions, largely excluded from the higher-paying executive positions, and promoted much slower than men in similar positions.

These statistics have been mentioned before in this prolonged debate, but they bear repeating, for they illustrate this grave aspect of employment discrimination. In 1968, for example, the last year for which extensive data is available, the median salary for all scientists was \$13,200; but for women scientists alone the median was \$10,000. The story is even more stark for blue-collar workers: the median salary for a full-time male factory worker was \$6,738; the counterpart female median was \$3,991. In fact, 60 percent of women but only 20 percent of men earned less than \$5,000 per year, while only 3 percent of women but 28 percent of men earned \$10,000 per year or more.

Perhaps nowhere can this problem be seen in better perspective than in higher education employment, an area over which even the presently weak EEOC does not have jurisdiction, but likewise a problem to which S. 2515 is addressed. Of all men in higher education facilities in 1968-69, 24.5 percent held the rank of professor, 21.9 percent the rank of associate professor, 28.2 percent the rank of assistant professor, and 25.3 percent instructor or below. Similar figures for women faculty were 9.4 percent professors, 15.7 percent associate professors, 28.7 percent assistant professors, and 46.2 percent instructor or below. In 1965-66, the median annual salary of women was \$410 less than men at the instructor's level, \$576 less at the assistant professor's

level, \$742 less at the associate professor's level, and \$1,119 less at the professor's level.

The litany of discrimination can continue into a consideration of women in professions in this country. Women presently comprise 3.5 percent of our Nation's lawyers, 2 percent of our dentists, and 7 percent of our physicians. The comparable figure for lawyers in Denmark is 24 percent and for dentists 70 percent. In Great Britain, 16 percent of the doctors are women, and this figure is 20 percent in Germany and 24 percent in Israel.

There are some who would say that much of this discrimination is caused by discrimination in previous years in the admissions processes of higher education, especially in graduate and professional schools. To an extent this is correct. The law school which nine other Senators and I attended, Harvard, did not admit women until after 1950. But the comparative figures I quoted above, for comparative ranks and salaries within educational institutions, and for comparative salaries even at the blue-collar level, belie such simplistic explanations. The problem of discrimination, as in other kinds of discrimination, forms that old vicious circle. The attack against discrimination against women, therefore, must come on a variety of fronts—to enact an equal rights amendment, to end discrimination in school admissions, to end job discrimination, and to act in yet other ways.

The question is not whether the EEOC should have jurisdiction over sex discrimination in employment, but whether EEOC is to have the tools needed to discharge its mandates effectively.

Whether S. 2515 is a civil rights bill or a women's rights bill should not matter. It should only further emphasize the importance of this legislation.

Once again, I urge my fellow Senators to heed the words of the Commission on

Civil Rights and act "promptly and vigorously" to remove the impediments from the effective functioning of the EEOC. The time to act is now. The place to begin is with passage of S. 2515.

ORDER FOR ADJOURNMENT FROM TUESDAY, FEBRUARY 22, TO 10 A.M. WEDNESDAY, FEBRUARY 23, 1972

Mr. MOSS. Mr. President, I ask unanimous consent that when the Senate completes its business on tomorrow, Tuesday, the Senate stand in adjournment until 10 a.m. on Wednesday next.

The PRESIDING OFFICER. Without objection, it is so ordered.

ORDER FOR RECOGNITION OF SENATOR RIBICOFF ON WEDNESDAY

Mr. MOSS. Mr. President, I ask unanimous consent that after the two leaders have been recognized on Wednesday, the Senator from Connecticut (Mr. RIBICOFF) be recognized for not to exceed 15 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. BYRD of West Virginia. Mr. President, the program for tomorrow is as follows:

The Senate will convene at 10:30 a.m. After the two leaders have been recognized, the Chair will recognize the distinguished Senator from Kansas (Mr. PEARSON) for not to exceed 15 minutes, following which there will be a period for routine morning business, not to extend beyond 11:15 a.m., with statements therein limited to 3 minutes.

At 11:15 a.m., the chair will lay before

the Senate the unfinished business, and the 1 hour, under rule XXII, will begin running on the motion to invoke cloture on S. 2515. At 12:15 p.m., the mandatory quorum call will begin. When a quorum has been established, the automatic roll-call vote on the cloture motion will take place. That rollcall vote will begin at about 12:25 or 12:30 p.m.

Additional rollcall votes can be expected tomorrow afternoon, especially in the event the cloture motion is adopted.

ADJOURNMENT UNTIL 10:30 A.M. TOMORROW

Mr. MOSS. Mr. President, if there be no further business to come before the Senate, I move, in accordance with the previous order, that the Senate stand in adjournment until 10:30 a.m. tomorrow.

The motion was agreed to; and (at 2:58 p.m.) the Senate adjourned until tomorrow, Tuesday, February 22, 1972, at 10:30 a.m.

CONFIRMATIONS

Executive nominations confirmed by the Senate February 21, 1972:

DEPARTMENT OF COMMERCE

Peter G. Peterson, of Illinois, to be Secretary of Commerce.

IN THE COAST GUARD

The nominations beginning Andrew P. Durkee, Jr., to be lieutenant commander, and ending Gordon A. Tooley, to be lieutenant, which nominations were received by the Senate and appeared in the Congressional Record on January 21, 1972; and

The nominations beginning Blenvent D. Ables, to be ensign, and ending Eugene N. Tulich, to be lieutenant, which nominations were received by the Senate and appeared in the Congressional Record on February 7, 1972.

EXTENSIONS OF REMARKS

SENATOR WILLIAMS CHARTS A LONG OVERDUE COURSE FOR HANDICAPPED LEGISLATION

HON. JENNINGS RANDOLPH

OF WEST VIRGINIA

IN THE SENATE OF THE UNITED STATES
Friday, February 18, 1972

Mr. RANDOLPH. Mr. President, as chairman of the Subcommittee on Handicapped Workers of the Senate Committee on Labor and Public Welfare, I have become increasingly aware of the need for consolidation of programs and new initiatives on behalf of the Nation's nearly 30 million Americans who are handicapped in some degree. We have, over the past three decades, made noteworthy strides toward eliminating the discrimination in employment and educational opportunities for the handicapped.

Yet, the problems faced by these worthy citizens are not being dealt with directly in the myriad of special programs aimed at their relief. As an ex-

ample, only recently have we seen serious study given to the transportation barriers faced by handicapped persons.

Senator HARRISON A. WILLIAMS, Jr., chairman of the Committee on Labor and Public Welfare, spoke recently to the annual legislative conference of the New Jersey School Boards Association. His address delineated the scope of these problems. He outlined forceful goals to accomplish what is needed in alleviating the complex problems that exist.

Senator WILLIAMS stated:

I wish it to be said of America in the 70's, that when its attention at last returned to domestic needs, the afflicted and the helpers are in the front rank of a new commitment of compassion.

Each of us shares this concern. Chairman WILLIAMS has given us bold new emphasis and direction. His words constitute a statement of purpose and give legislative direction that Americans applaud. I urge that my colleagues read his words, for they contain new hope for the handicapped.

Mr. President, I ask unanimous consent

that the text of Chairman WILLIAMS' historic address be printed in the RECORD.

There being no objection, the address was ordered to be printed in the RECORD, as follows:

ADDRESS OF U.S. SENATOR HARRISON A. WILLIAMS, JR.

It is a pleasure to be with you today at your annual legislative conference.

These are difficult and exciting times for the education community here in New Jersey and throughout the Nation.

And we in the Congress are extremely concerned about the future of American education.

There are many problems which we must confront during the next several years if the strength of our education system is to be sustained.

There is the problem of school finances and how the States and local school districts are going to continue raising the funds necessary to meet the educational needs of their communities.

We know that we can no longer rely almost exclusively upon the property tax to provide increased revenues for our schools; and many people are beginning to look to the federal government to provide these resources.